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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1920

No. [redacted]22

NEW YORK SCAFFOLDING COMPANY, PETITIONER,

vs.

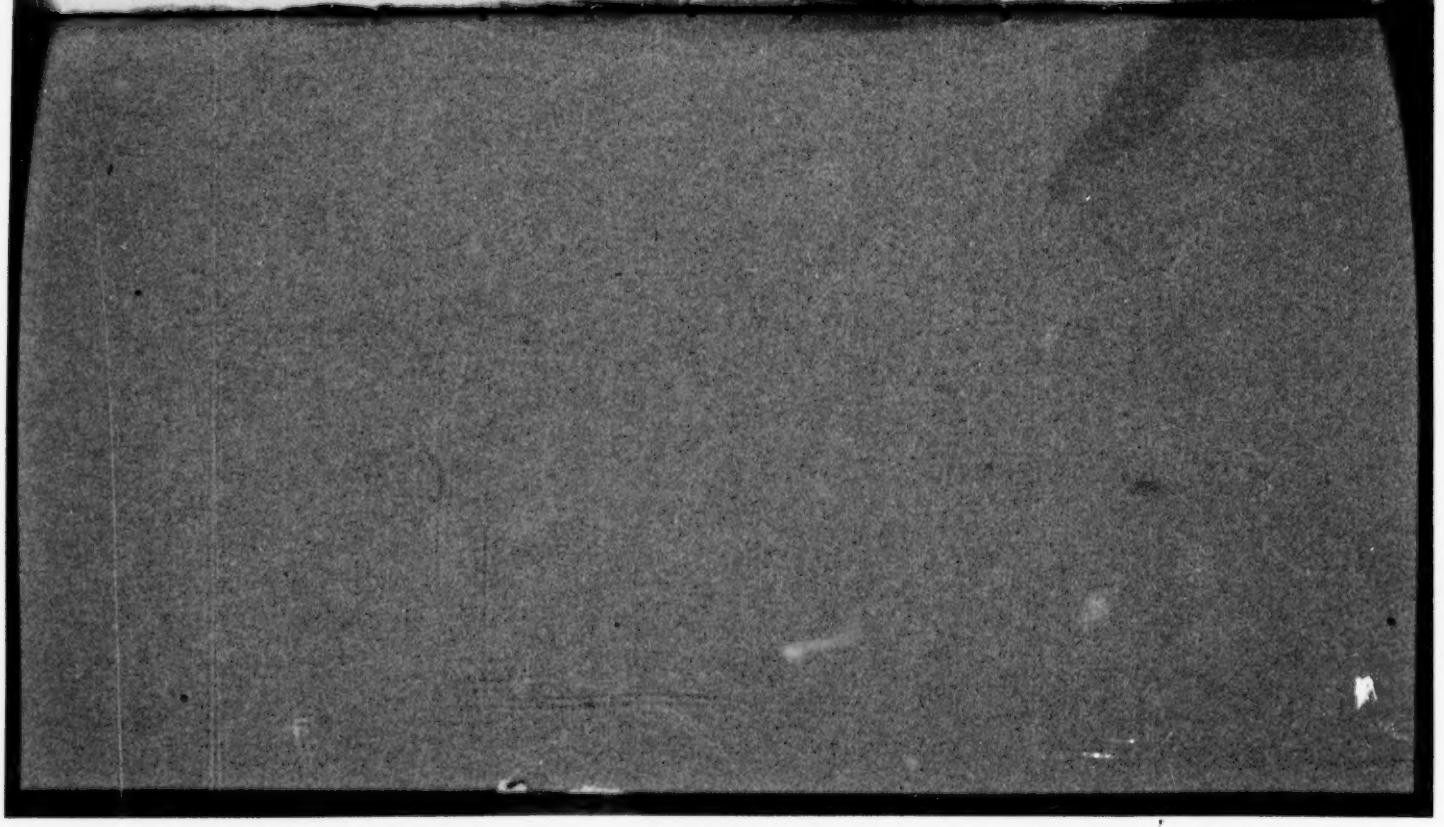
LIEBEL-BINNEY CONSTRUCTION COMPANY.

WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITION FOR CERTIORARI FILED SEPTEMBER 28, 1921.

CERTIORARI AND RETURN FILED OCTOBER 17, 1921.

(26,179)



(26,179)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 712.

NEW YORK SCAFFOLDING COMPANY, PETITIONER,

vs.

LIEBEL-BINNEY CONSTRUCTION COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

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a United States Circuit Court of Appeals for the Third Circuit.

NEW YORK SCAFFOLDING COMPANY, Complainant-appellant,

vs.

LIEBEL-BINNEY CONSTRUCTION COMPANY, Defendant-appellee.

TRANSCRIPT OF RECORD.

Appeal from the District Court of the United States for the Western District of Pennsylvania.

Office Supreme Court, U. S. Filed Sep. 28, 1917. James D. Maher, Clerk.

1 In the District Court of the United States for the Western District of Pennsylvania, October Term, 1914.

In Equity.

No. 28.

NEW YORK SCAFFOLDING COMPANY

vs.

LIEBEL-BINNEY CONSTRUCTION COMPANY.

Before Hon. Charles P. Orr, Judge.

Appearances:

Messrs. Goepel & Goepel, by C. P. Goepel, Esq., and C. P. Byrnes for Plaintiffs.
Messrs. Wallace R. Lane, George Mankle and Charles P. Hewes, for Defendant.

2 Among the rolls, records and judicial proceedings had in the United States District Court for the Western District of Pennsylvania, may be found the following words and figures:

C. P. Goepel, Dun Bldg., N. Y. City.
Bakewell & Byrnes, Pittsburgh, Pa.
Charles P. Hewes, Erie, Pa.
Wallace R. Lane and George Mankle, 1520 Marquette Bldg., Chicago, Ill.

October Term, 1914.

In Equity.

No. 28.

NEW YORK SCAFFOLDING COMPANY, a Corporation and Citizen of the State of New York,

vs.

LIEBEL-BINNEY CONSTRUCTION COMPANY, a Corporation and Citizen of the State of Pennsylvania.

Docket Entries.

Sept. 16, 1914.	Bill filed.
Sept. 16, 1914.	Subpœna issued.
Sept. 18, 1914.	Writ returned served on Liebel-Binney Construction Company by handing to and leaving a true and attested copy thereof with C. G. Binney, Secretary and Treasurer of said Liebel-Binney Construction Company personally, at Erie, Pa., Sept. 17, 1914.
Sept. 16, 1914.	Præcipe for appearance of Charles P. Hewes, Erie, Pa., for defendant filed.
Oct. 3, 1914.	Answer of Respondent filed.
Oct. 14, 1914.	Affidavit and Motion for Security for costs and Order thereon filed and entered granting a rule to show cause, ret'ble Oct. 19th, 1914.
3	
Nov. 11, 1914.	Bond for damages and costs filed and approved.
Mar. 1, 1914.	Petition and order filed and entered granting leave to deft. to file an amended answer.
Mar. 1, 1914.	Answer filed.
Mar. 15, 1914.	Affidavit of George P. Whitney and Petition and Affidavit of Liebel-Binney Construction Company filed.
Mar. 15, 1914.	Case continued to Sept. Term, 1915, at Erie.
Sept. 7, 1915.	Motion of defendant for continuance, etc., filed.
Sept. 7, 1915.	Petition of Egbert Whitney doing business under the name and style of The Eclipse Scaffolding Company, to be made a party deft., etc., filed.
Sept. 7, 1915.	Affidavits of Carl P. Goepel, (2), Frank B. Johnson, William E. Corne, & 2d, of William E. Corne, filed.
Sept. 8, 1915.	Stipulation for trial at Pittsburgh, Oct. 11th, 1915, filed.
Sept. 8, 1915.	Order filed and entered, making Egbert Whitney, doing business under the name and style of Eclipse Scaffolding Company, a party defendant; fixing times for listing witnesses, taking depositions, and assigning Oct. 11th, 1915, at 10 A. M. as date for trial at Pittsburgh.

Sept. 13, 1915. Præcipe for appearance of Wallace R. Lane and Goerge Mankle as attorneys and of counsel for
4 defendant, filed.

Sept. 14, 1915. Defendant's list of witnesses, filed.
Sept. 29, 1915. Depositions of S. C. Jennings, Egbert Whitney, Grant Parsons and Thomas J. Nash on behalf of defendant, filed.
Sept. 29, 1915. Depositions of William C. Englar, Elias H. Henderson, John A. Granger and Frank Macomber, on behalf of defendant, received and filed.
Oct. 11, 1915. 1 Civil subpœna for plaintiff.
Oct. 8, 1915. Testimony on behalf of plaintiff filed.
Oct. 11, 1915. Trial begun.
Oct. 11, 1915. Plaintiff's witnesses sworn: Eugene Pitcu, Geo. R. Stickney, Arthur E. Davidson and Thos. B. Jones.
Oct. 12, 1915. Case argued, C. A. V.
Apr. 28, 1916. Opinion filed and entered awarding decree dismissing bill.
May 27, 1916. Decree dismissing bill filed and entered.
Oct. 30, 1916. Petition for Appeal and Order allowing same filed and entered.
Oct. 30, 1916. Assignments of Error filed.
Oct. 30, 1916. Bond on Appeal approved and filed.
Oct. 30, 1916. Stipulation waiving Narrative filed.
Oct. 30, 1916. Citation awarded and issued.
Nov. 1, 1916. Citation returned; service accepted by Charles P. Hewes.
Nov. 1, 1916. Præcipe for Transcript filed.

5 United States District Court, Western District of Pennsylvania.

In Equity.

NEW YORK SCAFFOLDING COMPANY, Plaintiff,

vs.

LIEBEL-BINNEY CONSTRUCTION COMPANY, Defendant.

Henderson Patent, No. 959,008.

Bill of Complaint.

New York Scaffolding Company, the plaintiff above-mentioned, files this its bill of complaint, and alleges and charges as follows:

First. That the plaintiff is a coporation duly organized and existing under the laws of the State of New York, and is a citizen of said State and of the United States, and a resident of said State; on information and belief, that the defendant Liebel-Binney Construction Company is a corporation duly organized and existing under the

laws of the State of Pennsylvania, and is a citizen of said State of Pennsylvania, and of the United States, and is a resident of the State and Western District of Pennsylvania, and an inhabitant of said District; and has in said District a regular and established place of business and has committed in said District the acts of infringement hereinafter set forth.

Second. That this is a civil suit in equity for infringement of letters patent of the United States, and arises under the
6 patent laws of the United States, and is brought in equity because the plaintiff has no adequate remedy at law.

Third. On information and belief, that heretofore and before the 19th day of June, 1909, Elias H. Henderson was the true, original, first and sole inventor of certain new and useful improvements in scaffold-supporting means, not known or used by others in the United States before his invention or discovery thereof, and not patented or described in any printed publication in the United States or in any foreign country before his invention or discovery thereof, or more than two years prior to his application for letters patent of the United States hereinafter mentioned, and not in public use or on sale in the United States for more than two years prior to his said application, and which had not been abandoned. The said Elias H. Henderson thereupon on or about the 19th day of June, 1909, duly made application for letters patent of the United States for said improvements, and thereafter on due proceedings had letters patent of the United States bearing date the 24th day of May, 1910, and numbered 959,008, were duly issued upon the aforesaid application in conformity with law to the said Elias H. Henderson; the said letters patent were duly issued in the name of the United States of America under the seal of the Patent Office and were signed by the Acting Commissioner of Patents and were recorded in books in the Patent Office kept for that purpose, and contained a short title or description of the said invention or discovery correctly indicating its nature and design, and granted to the aforesaid Elias H. Henderson, his
7 heirs or assigns, for the term of seventeen years from and after the aforesaid 24th day of May, 1910, the exclusive right to make, use and vend the said invention throughout the United States and the territories thereof; profert of the said letters patent or a duly authenticated copy thereof is hereby made.

Before the granting of said letters patent to said Elias H. Henderson, the invention patented thereby had not been patented or caused to be patented by the inventor or by his legal representatives or assigns in a foreign country upon an application filed more than twelve months prior to the filing of the application in this country.

By valid assignments all the right, title and interest of the said Elias H. Henderson in and to said letters patent and the invention therein described and claimed, became vested in the plaintiff prior to the filing of this bill of complaint and prior to the commission by the defendant of the acts of infringement hereinafter complained of, and that the complaintant ever since has been and now is the sole owner and holder thereof.

Ever since its acquirement of said letters patent the plaintiff has

been largely engaged in different cities and places in the United States in putting the said invention into use and practice; the usual manner in which the plaintiff has carried on its said business has been to construct and lease for use to builders and others at a specified royalty or price per week the scaffolds embodying the said invention, the plaintiff retaining the ownership of and title
8 to the said scaffolds so leased by it, and the same being returned to it upon the completion by the respective lessees of the work for which the scaffolds had been required. The right of the plaintiff in and to said letters patent and the invention therein set forth and claimed has been generally recognized and acquiesced in by the public and by that portion of the public which makes use in its business of scaffolds for buildings of the general character of those described and claimed in the said letters patent. The aforesaid use of the said invention has been and is very profitable to the plaintiff, and it would realize further large sums if all infringements and unlawful use of the said invention without its consent should be prevented. Large numbers of builders and contractors in different parts of the United States have recognized the plaintiff's rights by leasing scaffolds as aforesaid and paying therefor the royalty or price aforesaid, and the same is at the present time being done by many builders and contractors throughout the country. Except for the doings and actings of the defendant and other infringers, the plaintiff now has and enjoys and ever since the aforesaid assignment of the said letters patent to it has had and enjoyed the sole and exclusive right in and to the said letters patent and invention.

On information and belief, that the defendant, well knowing the premises and intending and contriving to injure the plaintiff and deprive it of the great benefits and profits which it otherwise would have received, did, against the will and without the consent or allowance of the plaintiff, at the city of Erie, in the State and Western
9 District of Pennsylvania, subsequent to the issue of the said letters patent No. 959,008, and subsequent to the assignment thereof to the plaintiff, and prior to the filing of this bill of complaint, use and employ in and about buildings and for building purposes, scaffolds each and all of which contained and embodied the invention aforesaid, all in infringement of the said letters patent and in violation of the plaintiff's rights aforesaid and contrary to the statute in such cases made and provided, whereby the defendant has profited and the plaintiff has been damaged.

On information and belief, that the defendant was duly notified of its said infringement of said letters patent, and notwithstanding such notice continued thereafter to use and employ the same. patented, and now continues to use and employ the same.

The plaintiff there prays:

1. For an injunction, and a preliminary injunction pending this suit, restraining the defendant Liebel-Binney Construction Company, its officers, agents, employes, and all persons in privity with them, from directly or indirectly using or causing to be used, in and about building or for building purposes, any scaffold or scaffolds or scaffold-supporting means containing, embodying or employing the

invention claimed in said letters patent No. 959,008, and from infringing upon or violating the said letters patent in any way whatsoever.

2. For costs and an accounting of profits and damages, and that any damages assessed may be tripled.

3. For such other and further relief as the circumstances of the case may require.

[CORPORATE SEAL.]

NEW YORK SCAFFOLDING COMPANY,
By D. P. CHESEBRO, *Treas.*

C. P. GOEPEL,
Of Counsel and Solicitor,
290 *Broadway, New York City.*

BAKEWELL & BYRNES,
Of Counsel.

STATE OF NEW YORK,
County of New York, ss:

Denison P. Chesebro, being duly sworn, deposes and says: That he is the treasurer of New York Scaffolding Company, the plaintiff herein; that he has read the foregoing bill of complaint; that the statements therein contained are true of his own knowledge except so far as they are alleged to be stated on information and belief, and as to these statements, deponent believes them to be true; and further states that he believes the said Elias H. Henderson to be the original, true and first inventor of the new and useful improvements described in the letters patent in the bill of complaint named; and that the plaintiff's title to said letters patent is as set forth in said bill; and that the seal affixed to said bill of complaint is the corporate seal of the plaintiff corporation, and that he affixed the same thereto and signed the said bill for and on behalf of said corporation, being thereunto duly authorized.

DENISON P. CHESEBRO.

Sworn and subscribed before me this 10th day of September, 1914.

[NOTARIAL SEAL.] GEORGE V. STRACKBEIN,
Notary Public, New York County.

Filed Sept. 16, 1914.

11 In the District Court of the United States for the Western District of Pennsylvania, October Term, 1914.

In Equity.

No. 28.

NEW YORK SCAFFOLDING COMPANY, Plaintiff,

vs.

LIEBEL-BINNEY CONSTRUCTION COMPANY, Defendant.

Henderson Patent, No. 959,008.

Answer of Respondent.

This defendant reserving all manner of exceptions that may be had to the uncertainties and imperfections of the bill, by C. G. Binney, its secretary and treasurer, comes and answers thereto, or to so much thereof as it is advised is material to be answered, says:

First. Defendant admits that it is a corporation organized under the laws of the State of Pennsylvania, that it is a citizen of the State of Pennsylvania and of the United States and is an inhabitant and resident of the Western District of Pennsylvania, and has an established and regular place of business therein. Defendant has no knowledge of the character or residence of the complainant, and demands strict proof thereof and on information and belief denies that it has committed any acts of infringement as in said bill of complaint set forth.

12 Second. For answer to the second paragraph of said bill of complaint, defendant, on information and belief, says that the statements therein set forth are matters of law for the consideration and determination of the Court.

Third. The defendant has no knowledge of any invention of new and useful improvements in scaffold supporting means, prior to June 19th, 1909, by one Elias H. Henderson, for which letters patent No. 959,008 were issued to the said Elias Henderson, May 24, 1910, by United States, and demands full proof of all facts alleged in said bill with reference to the issue of said patent No. 959,008.

Fourth. The defendant has no knowledge of any assignment of the said Letters Patent No. 959,008 by said Elias H. Henderson to the said complaint and requires full proof of any statements in said bill of complaint with reference thereto.

Fifth. The defendant further denies that it has any knowledge of the amount, character and value of the business of the said plaintiff, or of its manner of carrying on the same, except what little the deponent may have been informed, but on information and belief it denies that it has ever interfered with the business of the plaintiff

in any manner or infringed upon any patent or other legal rights of the plaintiff at any time possessed or owned.

Sixth. On information and belief, defendant denies that it well knowing the premises, and intending and contriving to injure the plaintiff and deprive it of great benefits and profits which it
13 otherwise would have received, did, against the will and without the consent or allowance of the plaintiff, at the City of Erie, in the State and Western District of Pennsylvania, subsequent to the issue of the said letters patent No. 959,008, and subsequen to the assignment thereof to the plaintiff, and prior to the filing of this bill of complaint, use and employ in and about buildings and for building purposes, scaffolds each and all of which contained and embodied the invention aforesaid, all in infringement of the letters patent and in violation of the plaintiff's rights aforesaid and contrary to the statute in such case made and provided, and whereby it, the defendant, has profited and the plaintiff has been damaged, but on the contrary the said defendant through its officers is advised believes and therefore avers that the scaffolds used by it the defendant in and about buildings and for building purposes do not contain or embody the invention protected by letters patent No. 959,008, in any way or manner. All of which the defendant believes and expects to be able to prove upon trial of this action.

Seventh. Defendant admits that recently, after it had purchased a certain kind of scaffolding on its work, some one, claiming to be a representative of the plaintiff, came to the deponent and stated that the scaffolds used by defendant were an infringement of the rights of plaintiff under said letters patent No. 959,008.

Eighth. For further answer to said bill of complaint defendant says, that on or about the 20th day of May, 1914, it gave a
14 written order to the Eclipse Scaffolding Company of Omaha, Neb., for "18 pcs. Whitney Scaffold Hoist Machines, together with 300 ft. 7/16 Sweedes cable, plus price of 100 ft. extra cable, to each pair of Machines," all of which were, within a short time thereafter, delivered to the Defendant by the said The Eclipse Scaffolding Company, and that defendant is using the said machines at the present time. That at the time of the purchase of the said Scaffold Hoist Machines, defendant was advised and believed and now believes, that the said scaffold hoist machines were not an infringement upon any patent or other legal rights of the said plaintiff, or of any other person, firm or corporation, but that the said, The Eclipse Scaffolding Company owned and controlled full legal rights to manufacture and sell the same, and in doing so the said The Eclipse Scaffolding Company were not infringing upon any patent owned or controlled by the said plaintiff or any other person, firm or corporation covering scaffold hoist machine inventions.

Ninth. For further answer to said bill of complaint, defendant is advised, believes and therefore avers, that sometime prior to the 21st day of February, 1914, the plaintiff, New York Scaffolding Company, as complainant, filed a bill in equity to No. 82 Civil in Equity in the United States District Court for the District of Nebraska, Omaha Division, against one Egbert Whitney, predecessor in title

to the said The Eclipse Scaffolding Company, to the right to manufacture and sell, the scaffold hoist machines, so as aforesaid purchased by defendant from the said The Eclipse Scaffolding
15 Company, alleging an infringement of rights, under patent No. 959,008 mentioned and described in plaintiff's bill, which case was so proceeded in that on the said the 21st day of February, 1914, as deponent is advised, believes and therefore avers the said court made an order and decree in said action to No. 82 Civil in Equity of which the following is a true and correct copy, viz.:

"In the United States District Court for the District of Nebraska, Omaha Division.

In Equity.

No. 82.

"NEW YORK SCAFFOLDING COMPANY, Complainant,

vs.

EGBERT WHITNEY, Defendant.

"This cause came on to be heard on the 17th day of December, 1913, Mr. C. P. Goepel appearing on behalf of the complainant and Mr. Willard Eddy appearing on behalf of the defendant.

"Counsel for the complainant withdrew its case as to the Murray Patent in suit and stated that the only claims relied on were claims one and three in Patent No. 959,008, issued May 24th, 1910, for Scaffolding Supporting Means, to Elias H. Henderson; and thereupon after hearing the testimony offered and received and the arguments of counsel, the Court took the same under advisement.
16 "And now, having duly considered the same, and being of the opinion that the said claims are void for want of invention, and that, if they were not entirely void, there would, under the very limited interpretation that must be given to them, be no infringement by any scaffolding which might be constructed with the defendant's device.

"It is ordered, adjudged and decreed, that the bill herein be and the same is hereby dismissed with costs to be taxed.

By the Court,

PAGE MORRIS, *Judge.*

"Dated, February 21st, 1914.

"Endorsed: Filed Feb. 21, 1914, R. C. Hoyt, Clerk."

"DISTRICT OF NEBRASKA, *ss:*

"I hereby certify the foregoing to be a true and correct copy of the decree entered of record in my office in the above entitled action.

"Witness my hand and official seal at Omaha, this 24th day of February, A. D. 1914." "R. C. HOYT, *Clerk.*"

By which the said Court then and there having full jurisdiction of the subject matter in said bill mentioned and set forth and of all parties to the said action, did judicially declare and adjudicate that the scaffold hoist machines, purchased by the defendant, from the said, The Eclipse Scaffolding Company, and now in defendant's possession and use, were no infringement of any patented de-
17 vice exclusively owned and controlled by the plaintiff herein.

Having made full answer to all matters and things contained in the bill, this defendant prays to be dismissed hence with its costs in this behalf incurred.

LIEBEL-BINNEY CONSTRUCTION COMPANY,
By C. G. BINNEY,
Secy. & Treas.

STATE OF PENNSYLVANIA,
County of Erie, ss:

Personally appeared before the undersigned authority, Notary Public, C. G. Binney, deponent, who being duly sworn says that he is the Secretary and Treasurer of Liebel-Binney Construction Company, Defendant, that he knows the contents of the answer, and that the same is true of his own knowledge, except as to those matters stated on information and belief, and as to those he believes them to be true.

Sworn and subscribed this 28th day of September, A. D. 1914.

[SEAL.] LUCY M. GREEVES,
Notary Public.

My commission expires at the end of the next Session of Senate.

Filed Oct. 3, 1914.

18 In the United States District Court, Western District of Pennsylvania, October Term, 1914.

In Equity.

No. 28.

NEW YORK SCAFFOLDING COMPANY, Plaintiff,

vs.

LIEBEL-BINNEY CONSTRUCTION COMPANY, Defendant.

Petition for Leave to File Amended Answer.

To the Honorable the Judges of the said Court:

The Petition of Liebel-Binney Construction Company, defendant, by C. G. Binney, its Secretary, would respectfully represent:

That the above stated proceeding was brought to enjoin the de-

fendant from the use of a patented scaffolding that defendant had purchased from the Eclipse Scaffolding Company of Omaha, Nebraska, and to recover damages for its use.

That at the time the defendant company filed its answer to the bill the officers of the company were without definite information as to the facts involved in the controversy and deponent was compelled to file an answer that did not set forth fully the actual defense to the action.

Within a short time full and complete answer has been prepared and is now exhibited to the Court and the defendant prays the Court to permit it to file the said amended answer in the said pro-
19 ceeding.

And as in duty bound defendant will ever pray, etc.,

(Signed) LIEBEL-BINNY CONSTRUCTION CO., *Defendant.*

STATE OF PENNSYLVANIA,
County of Erie, ss:

C. G. Binney, petitioner, being duly sworn according to law doth depose and say that the facts set forth in the foregoing petition are true and correct to the best of his knowledge, information and belief.

C. G. BINNEY.

Sworn to and subscribed this 27th day of February, A. D. 1915.

[SEAL.] EDWARD HAYES,
Alderman, &c.

Filed March 1, 1914.

20 In the United States District Court, Western District of Pennsylvania, October Term, 1914.

In Equity.

No. 28.

NEW YORK SCAFFOLDING COMPANY, Plaintiff,

vs.

LIEBEL-BINNEY CONSTRUCTION COMPANY, Defendant.

Amended Answer.

The Amended Answer of the Liebel-Binney Construction Company, defendant, to the Bill of Complaint of the New York Scaffolding Company.

This defendant, now and at all times, saving and reserving unto itself all and all manner of benefit of exception to the many errors,

uncertainties and insufficiencies in said bill of complaint contained, for answer thereunto, or to such parts thereof as it is advised it is material or necessary to answer unto, answering, says:

1.

Defendant admits that plaintiff is a corporation existing under the laws of the State of New York.

2.

Defendant admits that it is a corporation organized and existing under the laws of the State of Pennsylvania and that it has an office and place of business in the Western Districts of Pennsyl-
21 vania.

3.

Defendant denies that Elias H. Henderson was the true, original, first and sole inventor and discoverer of certain alleged improvements in Scaffold-Supporting Means described in alleged letters patent No. 959,008, and denies that said alleged improvements had not been used or known to others in this country prior to said Henderson's alleged invention thereof, and denies that said alleged improvements had not been patented or described in any printed publication prior to said Henderson's alleged invention thereof, and denies that the same had not been in public use or on sale in this country for more than two years prior to the application for said alleged letters patent.

4.

Defendant is not informed with reference to the application for said alleged letters patent No. 959,008, and leaves plaintiff to make such proof thereof as it may be advised is necessary or material.

5.

Defendant admits that on the 24th day of May, 1910, alleged letters patent No. 959,008 were issued to Elias H. Henderson for certain alleged improvements in Scaffold-Supporting Means; but defendant has no information whether the same were signed, sealed, recorded and issued in due form of law and leaves plaintiff to make such proof thereof as it may be advised is necessary or material.

22 6.

Defendant is not informed with reference to the alleged assignment by said Henderson to plaintiff of said alleged letters patent No. 959,008 and therefore defendant denies said assignment and defendant denies that plaintiff is the owner of any exclusive rights whatsoever in respect of the alleged invention set forth in said letters patent.

7.

Defendant is not informed with reference to the business of plaintiff or the manner of conducting the same or the places, if any, where plaintiff has put its alleged invention into use and practice; but defendant denies that the alleged invention has ever gone into extensive use anywhere and defendant denies that the devices alleged to have been leased by plaintiff embodied the alleged inventions set forth in said alleged letters patent. Defendant further denies that the alleged inventions or improvements set forth in said alleged letters patent No. 959,008 are of any utility or value, and it denies that the public or any considerable portion thereof has acquiesced in the validity of said alleged letters patent or recognized any rights of plaintiff in or under the same, and it denies that the said alleged letters patent are of any value whatsoever.

8.

Defendant denies that it ever made or used any scaffold-supporting means of the kind set forth in said alleged letters patent No. 959,008, or covered by any of the claims thereof.

23

9.

Defendant avers, on information and belief, that plaintiff did not affix to its product the notice of its patent rights in such cases made and required and defendant denies that it had any actual notice of the alleged patent or patent rights of plaintiff until after it had purchased in the open market and had installed the devices herein complained of.

10.

Defendant denies that it ever made any profit whatsoever from the use or employment of any scaffold-supporting means set forth in said alleged letters patent No. 959,008, and it denies that it has ever in any way infringed or violated any rights of plaintiff in, to or under said alleged patent No. 959,008.

11.

Defendant avers, upon information and belief, that the alleged inventions and improvements described and claimed in said alleged letters patent No. 959,008 were not inventions when produced by said Henderson, but that, prior to the alleged invention or discovery thereof by said Henderson, and more than two years prior to his application for said alleged letters patent No. 959,008, said alleged improvements and all material and substantial parts thereof had been described, patented and published in certain letters patent hereinafter mentioned of the United States and Great Britain; wherefore defendant says that said alleged letters patent No. 959,008 were and are null and void. Defendant sets up and pleads the following letters

patent of the United States and each of them as a complete
24 anticipation of the alleged improvements set forth in said alleged letters patent No. 959,008, towit:

No. 382,252 granted May 1, 1888 to Charles D. Bowyer and William H. Casperson, of Camden, New Jersey, for Painter's Stage.

No. 382,901 granted May 15, 1888, to Charles W. Randall, James H. Smith and S. F. Emley, of Jersey City, New Jersey for Scaffold for Wooden Buildings.

No. 607,805 granted July 19, 1898, to Johann Sladek and George Ladewich, of New York, New York, for Scaffold.

No. 673,384 granted May 7, 1901, to Charles J. Clark, of New York, New York, for Mason's Platform for Buildings.

No. 763,274 granted June 21, 1904, to Clair Foster, of Douglaston, New York, for Scaffold.

No. 763,884 granted June 28, 1904, to Louis H. Harpin and Theophile H. Harpin, of Kankakee, Illinois, for Scaffold.

No. 769,395 granted Sept. 6, 1904, to William J. Murray, of New York, New York, for Scaffold-Support.

No. 775,704 granted Nov. 22, 1904, to Orlando B. Howe, of Lanark, Illinois, for Fire Escape.

No. 785,289 granted Mar. 21, 1905, to Thomas J. Campbell, of San Francisco, California, for Outside Hanging Scaffold.

No. 792,341 granted June 13, 1905, to William H. Morrow, of New York, New York, for Hanging Scaffold.

25

No. 796,807 granted Aug. 8, 1905, to Michael Cavanagh, of New York, New York, for Scaffold-Support.

No. 797,722 granted Aug. 22, 1905, to Henry B. Crandall, John L. McManus and James D. MacPherson, of Lynn, Massachusetts, for Hoist Chair.

No. 841,932 granted January 22, 1907, to Denison P. Chesebro, of New York, New York for Scaffold.

No. 842,382 granted Jan. 29, 1907, to Charles J. Clark, of New York, New York, for Mason's Platform for Buildings.

No. 854,959 granted May 28, 1907, to William J. Murray, of New York, New York, for Adjustable Scaffold.

No. 882,206 granted Mar. 17, 1908, to William J. Murray, of New York, New York, for Scaffold.

Defendant sets up and pleads the following letters patent of Great Britain as a complete anticipation of the alleged improvements set forth in said alleged letters patent No. 959,008, to-wit:

No. 9518, dated May 5, 1896, to E. J. Palmer for Staging.

12.

Defendant further states, upon information and belief, that prior to the alleged invention by said Henderson of the alleged improve-

ments set forth in said alleged letters patent No. 959,008, said alleged improvements had been and were known to and had been in
26 public use and on sale in the United States by each of the persons named in paragraph 11 hereof as patentees and inventors in the letters patent of the United States set forth in said paragraph at the places of their respective residences as therein set forth, and that such public use and sale had been for more than two years prior to the filing of the application for said alleged letters patent No. 959,008.

13.

For further answer to said bill of complaint, defendant says, that on or about the 20th day of May, 1914, it gave a written order to the Eclipse Scaffolding Company of Omaha, Nebraska, for "18 prs. Whitney Scaffold Hoist Machines, together with 300 ft. 7-16 Sweedes cable, plus price of 100 ft. extra cable, to each pair of machines," all of which were, within a short time thereafter, delivered to the defendant by the said The Eclipse Scaffolding Company, and that defendant is using the said machines at the present time. That at the time of the purchase of the said scaffold Hoist Machines, defendant was advised and believed, and now believes, that the said Scaffold Hoist Machines were not an infringement upon any patent or other legal rights of the said plaintiff or of any other person, firm or corporation, but that the said The Eclipse Scaffolding Company owned and controlled full legal rights to manufacture and sell the same, and in doing so the said The Eclipse Scaffolding Company were not infringing upon any patent owned or controlled by the said
27 plaintiff or any other person, firm or corporation covering scaffold hoist machine inventions.

14.

Defendant is advised, believes and therefore avers, that some time prior to the 21st day of February, 1914, the plaintiff, New York Scaffolding Company, as Complainant, filed a bill in equity in the United States District Court for the District of Nebraska, Omaha Division, against one Egbert Whitney, predecessor in title to the said The Eclipse Scaffolding Company, to the right to manufacture and sell the scaffold hoist machines, so as aforesaid purchased by defendant from the said The Eclipse Scaffolding Company, alleging an infringement of rights under patent No. 959,008 mentioned and described in plaintiff's bill, which case was so proceeded in that on the said the 21st day of February, 1914, the said court made its final decree in said cause as follows:

28 "In the United States District Court, District of Nebraska, Omaha Division.

In Equity.

No. 82, Civil.

NEW YORK SCAFFOLDING COMPANY, Complainant,

v.

EGBERT WHITNEY, Defendant.

This cause came on to be heard on the 17th day of December, 1913, Mr. C. P. Goepel appearing on behalf of the complainant, and Mr. Willard Eddy, appearing on behalf of the defendant.

Counsel for complainant withdrew its case as to the Murray patent in suit and stated that the only claims relied on were claims 1 and 3 in patent No. 959,008, issued May 24th, 1910, for Scaffolding Supporting Means, to Elias H. Henderson; and thereupon, after hearing the testimony offered and received and the arguments of counsel, the Court took the case under advisement.

And now, having duly considered the same, and being of the opinion that the said claims are void for want of invention, and that, if they were not entirely void, there would, under the very limited interpretation that must be given to them, be no infringement
29 by any scaffolding which might be constructed with the defendant's device.

It is ordered, adjudged and decreed, that the bill be and the same is hereby dismissed with costs to be taxed.

By the Court,

PAGE MORRIS, *Judge.*

Dated February 21st, 1914.

[Endorsed:] Filed February 21, 1914. R. C. Hoyt, Clerk."

By which the said Court then and there having full jurisdiction of the subject matter in said bill mentioned and set forth and of all parties to the said action, did judicially declare and adjudicate that the Scaffold Hoist Machines here in controversy, being Scaffold Hoist Machines of the kind purchased by the defendant from the said The Eclipse Scaffolding Company, and now in defendant's possession and use and of which complaint is herein made, were no infringement of any patent exclusively owned and controlled by the plaintiff herein. Wherefore, defendant, having acquired from said The Eclipse Scaffolding Company the Scaffold Hoist Machines of which complaint is made herein, is in privity with said Egbert Whitney, predecessor of The Eclipse Scaffolding Company, and is entitled to the protection of said decree.

This defendant having fully answered all and singular those por-

tions of the bill of complaint that it is material and necessary to answer, denies all and all manner of things in said bill alleged
30 which are not hereinbefore answered unto. All of which statements and defenses this defendant is ready to aver, maintain and prove as this Honorable Court shall direct; and it prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

STATE OF PENNSYLVANIA,
County of Erie, ss:

Before me a Notary Public for said county and state personally appeared C. G. Binney, who being duly sworn according to law doth depose and say that he is secretary of the Liebel-Binney Construction Co., defendant, and that the facts set forth in the foregoing amended answer where stated upon personal knowledge, are true and correct as he verily believes and where stated upon information he believes the same to be true.

C. G. BINNEY.

Sworn to and subscribed this -- day of February, 1915.

Filed March 1, 1914.

31 *Testimony and Exhibits Offered at Final Hearing.*

Counsel for plaintiff offer in evidence certified copies of the patent in suit, being Letters-Patent No. 959,008, issued to Elias H. Henderson May 24, 1910, and the same is marked as "Plaintiff's Exhibit No. 1," of this date.

Counsel for plaintiff also offer in evidence the original assignment by Elias H. Henderson to The Henderson Scaffold Hoist Company, it being understood that a copy thereof might be marked and used instead of the original; and the same was marked as Plaintiff's Exhibit No. 2 of this date.

Counsel for plaintiff also offer in evidence assignment from The Henderson Scaffold Hoist Company to the New York Scaffolding Company, it being understood that a copy thereof might be marked and used instead of the original, and the same was marked as Plaintiff's Exhibit No. 3 of this date.

Counsel for plaintiff offer in evidence the admission in the answer that the plaintiff is a corporation of the State of New York.

Counsel for plaintiff also offer in evidence the admission in the answer that the defendant used the Whitney Scaffold Hoist machines at the time of the filing of the answer and at the time the bill in this case was filed.

Counsel for defendant object to this offer, as fragmentary, and therefore, incompetent and irrelevant, and suggest that the entire answer should be the record in the case.

Mr. Goepel: Then I offer the following portion of paragraph 8 of the answer, as an admission:

"For further answer to said bill of complaint, defendant says that on or about the 20th day of May, 1914, it gave a written
32 order to the Eclipse Scaffolding Company of Omaha, Nebraska, for '18 pcs. Whitney Scaffold Hoist Machines, together with 300 feet 7/16 Sweedes cable plus price of 100 feet extra cable to each pair of machines'; all of which were, within a short time thereafter, delivered to the defendant by the said Eclipse Scaffolding Company, and that defendant is using the said machines at the present time."

EUGENE PITOU, a witness called upon behalf of the plaintiff, having been duly sworn, testified as follows:

Direct examination.

By Mr. Goepel:

Q. State your name, age, residence and occupation?
A. Eugene Pitou; age, 32; occupation, scaffolding business.
Q. Have you ever been at Erie, Pennsylvania?
A. I have.
Q. Did you at any time notice any work being done by a concern known as the Liebel-Binney Construction Company?
A. I did.
Q. Will you please describe the nature of the work?

Objected to by counsel for defense unless the time is fixed as of a date prior to the filing of the bill.

Q. About when were you at Erie, Pennsylvania, and saw this work going on by the Liebel Construction Company?
A. I don't recall the exact date, but the building of the Palace Hardware Company was under construction, and the Whit-
33 ney Scaffolding Hoist Machines were being used thereon.
Q. And was that date before or after this suit was brought?

Objected to by counsel for defense as leading.
Objection overruled.

A. Before.
Q. And what did you thereupon do?

Objected to unless the evidence as to the date, how long before it was, and that it was within the statutory period.

The Court: What difference does it make what he did, so far as the record in this case goes? Is he connected with one of the parties in the case?

By Mr. Goepel:

Q. Are you connected in any way with the plaintiff company?
A. Yes, I am secretary of the Patent Scaffolding Company.

Q. After you saw this work going on, by the Liebel-Binney Construction Company, what did you do with respect to taking any steps against them?

Objected to by counsel for defense, as the witness has not shown in any way that his appearance in Erie was within six years prior to the filing of the bill of complaint.

The Court: The objection is overruled. Unless it is shown to be within the statutory period, it would be of no value.

By Mr. Goepel:

Q. What connection, if any, do you have with the New
34 York Scaffolding Company, the plaintiff in this suit?

A. The Patent Scaffolding Company operate under the New York Scaffolding Company patents, and it is part of my duties to report any infringements of the patents to the counsel of the New York Scaffolding Company.

Q. And did you so report any structures that you believed did interfere?

A. I did.

Q. And what were those structures?

Objected to by counsel for defense as immaterial and irrelevant.

A. One of these structures that I so reported was the Whitney Scaffolding Hoist machine here in Court, as hanging on this building above mentioned.

Q. And about how long before this suit was brought did you make that report to the patent counsel of the New York Scaffolding Company?

A. I can't say exactly, but I think the papers were prepared immediately.

Q. Immediately after what?

A. After my report.

Q. That would be within a week or a month?

A. Within a month, anyway.

Q. Before you made the report to the counsel of the New York Scaffolding Company, what did you see at Erie, Pennsylvania, at the place of business of the Liebel-Binney Construction Company?

A. I saw the Whitney Scaffolding Hoist machines hanging upon the above mentioned building and masons working on the platform.

Q. How were they hung?

Objected to by counsel for defense as incompetent, unless it is shown that he has examined these devices carefully.

35 The Court: Well, he is testifying as to what he saw. Proceed.

A. Each drum was suspended, or attached to a cable—to the cables from the overhead outrigger beam, and two drums were associated at

the end of each putlog or cross-beam. Over these putlogs the scaffold plank were laid for the platform.

Q. You spoke of each putlog being associated with a beam at each end. What do you mean by associated?

A. I mean that each putlog passed through two drums.

Q. Do you mean drums or frames of the drums?

A. I mean drum frames.

(A model was here shown witness.)

Q. I show you a model which is here in Court, and ask you how nearly that represents what you saw at Erie, Pa.?

Objected to by counsel for defense and as suggestive of the answer sought.

Objection sustained.

Exception noted.

Q. How were the putlogs supported by the frames of the drums?

The Court: You had better ask him what he means by a putlog.

By Mr. Goepel:

Q. Will you please state briefly what your understanding is of the word putlog?

A. It is a cross member upon which the scaffold planks are laid.

Q. Is there anything within your sight that indicates or
36 shows just what you have in mind when you use the word "putlog"?

The Court: That is perfectly plain.

Mr. Lane: I would like to have noted of record that the plaintiffs have produced here a sample of a device which the defendant does not concede to be the device in use, and that that is within sight before the witness and in the presence of the Court and is within sight of the witness while he is making his answers; and it is, therefore, objected to as incompetent, irrelevant and immaterial.

By Mr. Goepel:

Q. When you were answering the questions that I asked you before I referred to a certain model, did you examine that model, or did you see it while you were testifying, or did you testify of your own recollection?

A. I don't think I noticed the model while I was testifying.

The Court: The objection is well taken, and the model should not be exhibited in the presence of the witness or of the Court, until it has been properly proven.

By Mr. Goepel:

Q. What was the position of the frame which supported the drums in respect to the putlogs?

A. The drums were broadside to the wall of the building.

Q. And in what manner were they located with respect to the putlogs?
A. The lower part of the drum frames passed under the putlog.
Q. And what did these frames resemble?
A. I would call them "U"-shaped frames.
37 Q. And was the end of the putlog within or without the U-shaped frame?
A. It was within the U-shaped frame.
Q. And was this U-shaped frame separated, or was it continuous?
A. A continuous U-shaped frame.

By the Court:

Q. What do you mean by the words continuous or separated U-shaped frames?

By Mr. Goepel:

Q. What do you mean by the word "continuous?"
A. By continuous I mean that it passed completely and continuously around the putlog.
Q. What was arranged on the putlogs?
A. The scaffold planks were laid on the putlogs.
Q. And what was there in the frames besides the drum that you spoke of?
A. In addition to the end of the putlog in each drum frame and a drum, there was a clamp.
Q. And what was the function of the clamp?
A. To support the drum frame on the table.
Q. And what was the function of the drum?
A. A secondary clamp to support the drum on the table.
Q. And what made the drum go or turn?
A. Operating by means of a lever ratchet handle.
Q. And what was this lever and ratchet handle used for?

Objected to by counsel for defense, unless it is shown that the witness actually saw the device in use or used it himself.

Q. Did you see the handle and the ratchet mechanism used?
A. Yes. To elevate the scaffold platform.
38 Q. What did you see on the platforms of the structure that you saw at Erie, Pa.?
A. Masons laying brick.
Q. And was this during the course of construction of the building?

The Court: He has already stated that.

By Mr. Goepel:

Q. State briefly what education, if any, you have in mechanical lines, that enables you to testify?

Objected to by counsel for defense as incompetent and immaterial with a fact witness.

The Court: He was interested in these structures and in their use, and he was looking to see how he could find out. I will sustain the objection.

Exception noted.

By Mr. Goepel:

Q. I hand you a structure and ask you to state if you know what that is?
A. I do.
Q. Where, if anywhere, did you see anything like that before?

Objected to by counsel for defense, as incompetent and immaterial.

The Court: In the present state of the proofs, the objection is sustained.

By Mr. Goepel:

Q. How nearly did the frames and drum that you saw at Erie, Pa., resemble the structure that I have placed before you?

Objected to by counsel for defense, on the ground that this
39 device is put before the witness, and he is asked to testify concerning the same.

Objection sustained.
Exception noted.

Q. I hand you an apparatus and ask you to state what it is, if you know?
A. It is a Whitney scaffold hoist machine.
Q. Please describe its operation, briefly, as you have seen it in practice?

The Court: No; not necessarily; unless there is any ambiguity in the matter. He has stated what it is. If there is any question about how it is operated that cannot be understood, you can ask him about that.

By Mr. Goepel:

Q. How does this Whitney scaffold hoist machine operate?

Objected to by counsel for defense as incompetent, irrelevant and immaterial.
(The Court here asked to see the machine about which the witness was being interrogated, and counsel for plaintiff exhibited the machine to the Court and operated the lever thereon.)

The Court: That is so simple that there is no necessity for his stating anything further about it that I can see. If you ask him to what use they are put, that is a matter that perhaps is permissible.

By Mr. Goepel:

Q. To what use are devices like the Whitney scaffold hoist machine, that you have stated about, put?

40 Objected to by counsel for defense, unless it is connected in some way with the use by this particular defendant.

The Court: Well, it won't amount to anything unless it is so connected.

A. They are used for supporting and raising scaffolding platforms supplied to masons.

Counsel for defendant moves to strike out the answer as not in any way connecting the defendant with the structure inquired about, and it is, therefore, immaterial.

The Court: The objection is overruled for the reason that it seems to be plainly introductory. If it is not followed by further proof, it will amount to nothing.

By Mr. Goepel:

Q. When and where did you see such use as you have just stated?
A. During the late summer or early fall of 1914, upon the Palace Hardware Building at Erie, Pa., by the Libel-Binney Construction Company.
Q. And was this before or after you gave instructions to counsel for the New York Scaffolding Company to bring suit against the Libel-Binney Construction Company?
A. Before.

By the Court:

Q. When was this that you saw that?
A. It was during the late summer of 1914, or the early fall of that year.

Mr. Lane: Then it is objected to as after the bringing of this suit and, therefore, immaterial and not the proper foundation for this action.

41 The Court: I will permit the evidence to remain, overrule the objection and note an exception for the defendant.

By Mr. Goepel:

Q. In what manner were the frames at Erie, Pennsylvania, by the Liebel-Binney Construction Company placed in respect to the putlogs?
A. One frame went around each end of each putlog.
Q. How were the frames in respect to the walls of the building in that particular case?
A. The frames were broadside to the walls.
Q. And how were the putlogs with respect to the walls of the building?
A. At right angles.

Counsel for plaintiff offers in evidence the machine which the witness has stated is a Whitney Scaffolding hoist machine, and asks to have the same marked as an exhibit.

Offer objected to by counsel for defense, as not properly shown to have been a machine in any way used by the defendant, and it is, therefore, incompetent and irrelevant to any issue in this case.

The Court: The objection is overruled and exception noted to the defendant, although this may amount to nothing unless further proof is offered.

The hoisting machine in question was marked as Plaintiff's Exhibit No. 4 of this date.

By Mr. Goepel:

Q. Did you at any time make a model which illustrates the
42 mode of working of the machines and platforms that you saw at Erie, Pennsylvania?

A. I did.

Q. Have you that model here in Court?

A. It is here.

Q. Will you please identify it?

(Model shown witness.)

A. That is it.

The model identified by the witness is offered in evidence by counsel for plaintiff as being largely illustrative, but as showing the mode of working the defendant's device, in support of the testimony of the witness as given, without describing in detail the method of working of the different machines.

Objected to by counsel for defense, as not properly showing, or even attempting to be proved as correctly showing the use of the structure by the defendant, and therefore, as incompetent and irrelevant.

The Court: I think it should be received as being the witness's own model, or a reproduction in a model of what he saw at Erie. It was not made at the time, but made afterwards, I assume. I will permit it to be received as illustrative of the testimony of the witness.

Exception noted.

(The model identified by the witness was here marked as Plaintiff's Exhibit No. 5 of this date.)

By Mr. Goepel:

Q. For what special purpose was this model made?

A. To produce in court.

43 Q. In what court and in what case?

A. The Liebel-Binney case in any court that it should come up in.

Cross-examination.

By Mr. Lane:

Q. Was this device, which was marked as Plaintiff's Exhibit No. 4, actually used by the defendant at any time?

A. I don't know.
Q. Not within your knowledge?
A. No, sir.
Q. It wasn't used at Erie, Pa., was it?
A. I don't know.
Q. You don't know of it ever having been used in this district, do you?
A. I do not.
Q. You don't know how the construction was used, if used at all, do you?
A. I do not.
Q. You never saw it in actual use, did you?
A. Never.

Counsel for defense moved to strike Exhibit No. 4 from the record, in view of the admission of the witness, as incompetent and irrelevant and having no bearing on this controversy.

The Court: Before I rule upon this question, I will permit you to ask him another question, Mr. Goepel.

By Mr. Goepel:

Q. Is this device, the Whitney machine, such a one as is known in the trade as the Whitney scaffold hoist machine?
A. It is.
Q. And what is your knowledge in that respect—on what do you base that answer?
A. From catalogues issued by Mr. Whitney or the Eclipse Scaffolding Hoist Company, in which it has been so designated as the Whitney Scaffold hoist machine.
44 Q. Have you any knowledge of any device being used in the city of Omaha?
A. I have.
Q. And what was that device?

The Court: That is wholly immaterial to this issue.
Mr. Goepel: I simply want to bring out the fact that he bases this on.
The Court: If the thing is known generally in the trade, let him identify it in that way.

By Mr. Goepel:

Q. Is the device before you generally known in the trade as the Whitney scaffold hoist machine?
A. It is among mason contractors.

This is objected to by counsel for defense because it is not traced to this defendant, and is, therefore, incompetent and immaterial.

The Court: I will overrule the motion and note an exception to defendant.

By Mr. Lane:

Q. Where did this device, Plaintiff's Exhibit 4, come from, if you know of your own knowledge?

A. I do not.

Q. It might have been made by the plaintiff, so far as you know?

A. No; not made by the plaintiff.

Q. The plaintiff doesn't make any devices?

A. The plaintiff does make devices.

Q. When did the plaintiff, the New York Scaffolding Company, make any device like this?

A. I didn't say it made any device like that.

This is objected to by counsel for plaintiff as not proper cross-examination.

45 Objection overruled.
Exception noted.

Q. When did it make any device of this character?

Objected to by counsel for plaintiff as not proper cross-examination.

Objection overruled.

Exception noted.

A. It never made any device of that character.

Q. Well, when did it make any device of this general type?

Objected to by counsel for plaintiff as not proper cross-examination, unless confined to this exhibit.

Objection overruled.

Exception noted.

A. Since it started business.

Q. Well continuously since, and is it engaged in that business at the present time?

A. I believe so.

Q. And you think that the New York Scaffolding Company is making devices at the present time, do you?

A. I am not connected with the New York Scaffolding Company.

Q. You have brought out some relationship between the New York Scaffolding Company and the Patent Scaffolding Company. Just what is that relationship?

A. The Patent Scaffolding Company operates under certain patents of the New York Scaffolding Company. In other words it is licensed.

Q. What patents?

A. The Henderson patent is one.

46 Q. What else?

A. I don't recall the other patents.

Q. The Murray?

A. I believe they have been licensed under the Murray patents.

Q. Which Murray patent?

Mr. Goepel: Isn't this beyond cross-examination, your Honor?
The Court: They have a right to test the witness by showing his interest. I think it is perfectly proper.

A. I believe there were three Murray patents issued.

By Mr. Lane:

Q. Does the Patent Scaffolding Company have a license under all of these three patents?
A. I believe it has.

(Paper shown witness.)

Q. Is that the patent you refer to, patent No. 848,959, of May 28, 1907?
A. That is one of the patents.
Q. Is that the one under which the American Safety Device Company is licensed to operate its devices?
A. I believe it is.
Q. Does the New York Scaffolding Company, or the American Safety Device Company sell either of the devices shown in that patent?

Objected to by counsel for plaintiff as not proper cross-examination.
Objection overruled.
Exception noted.

A. I think the New York Scaffolding Company has sold some devices, but I am not so sure.
47 Q. Well will you just bring out, so we can make this clear to the Court, and save me a lot of time, what the relationship between the New York Scaffolding Company and the Patent Scaffolding Company and the American Safety Device Company is?

Objected to by counsel for plaintiff as not proper cross-examination.

The Court: It is merely testing the bias of the witness. If his company, or he personally, is interested in the result of this litigation, they have a right to go to the bottom of it for the purpose of testing his bias.
Mr. Goepel: But this is a mere fishing expedition.
Mr. Lane: The purpose of this examination is to show why this witness should notify the New York Scaffolding Company.
The Court: That is proper.

(Question read.)

A. The Patent Scaffolding Company leases scaffolding devices to the trade under a license from the New York Scaffolding Company and from the American Safety Device Company.

By Mr. Lane:

Q. What is the nature of the license—that is, under what patent are they licensed?

A. Under several patents in each case, as I understand it.

Q. There is a string of patents, as I understand you?

A. Yes, sir.

Q. How is the device marked and with what patent is it marked that is leased under these various patents by the Patent Scaffolding Company or the New York Scaffolding Company?

48 A. That is a little involved. May I ask to have it read?

Q. I will withdraw the question and put it again, to save time. Are the devices which are leased by the Patent Scaffolding Company, of which you are secretary, marked as follows: "Property of the Patent Scaffolding Company. Machines rented, not sold. Patent No. 854,959, of May 28, 1907"?

A. No, sir.

Q. How are they marked?

A. I don't recall exactly.

Q. Are you sure they are not marked in that way?

A. I am.

Q. Is that one of the New York Scaffolding Company's devices? I refer to a photograph which was marked by the Commissioner, in the taking of testimony in this case as Defendant's Exhibit 6, one which is leased by the Patent Scaffolding Company.

A. It is a similar looking device.

Q. Isn't that the very plate that is put on one of those devices there which has the marking I have just read?

A. It appears to be.

Q. And isn't that one of the devices leased by the Patent Scaffolding Company?

A. I can't say as to that.

Q. Isn't it a matter of fact that all of the devices put out by the Patent Scaffolding Company are marked in that way?

A. No, sir.

Q. How are they marked, other than that?

A. There are some devices that look very similar that are operated by the Patent Scaffolding Company of Illinois, that are marked in a different way, and I can't be sure——

Q. But all of the others are marked in that way, are they,

49 so far as you know?

A. I think they are.

Q. And, by the way, this one is marked "Patent Scaffolding Company, Chicago, Illinois," isn't it?

A. Well, I told you how I thought it was marked before.

Q. Then, if I understand you correctly, all of the devices leased by the Patent Scaffolding Company, of which you are secretary are either marked "The Patent Scaffolding Company of Illinois, Chicago, U. S. A. Machines rented, not sold. Patent No. 854,959, May 28, 1907," or they are marked "Patent Scaffolding Company"—

with the rest of the designation, except that "of Illinois, U. S. A." is not used—isn't that so?

A. I believe that is correct, yes.

Q. That is the only patent marking that is on any of the devices that are leased by the Patent Scaffolding Company, isn' it?

A. I believe so.

In connection with the testimony of the witness, counsel for defendant offer in evidence photograph marked as Defendant's Exhibit No. 6, which was marked and offered during the taking of depositions, in view of the testimony of this witness having identified the machine; and the said exhibit was marked as Defendant's Exhibit "A" of this date.

Q. I show you a pamphlet which is marked on the outside cover, "The Patent Scaffolding Company of Illinois, No. 5 West Chicago, Illinois," and ask you whether that is a pamphlet which is put out by the Patent Scaffolding Company of which you are secretary, or one of its subsidiary companies?

A. Not by the Patent Scaffolding Company of which I am secretary.

50 Q. By the Patent Scaffolding Company of Illinois, which operates under your license?

A. As I understand, they are licensees, and we simply operate under a patent owned by other people.

Q. Don't you sub-license others?

A. No, we do not.

Q. You simply use the device under license from the owners?

A. Yes, sir.

Q. And all of the leases that you have, have the mark on them that I have read to you?

A. As far as I know.

Counsel for plaintiff think this is not cross-examination.

The Court: Of course, this examination was allowed for the purpose of showing bias or interest of the witness, and the cross-examination ought not to go to other matters.

Mr. Lane: What I am trying to show is the relation between the parties, and what led them to give this notice. I don't know how far I am permitted to—with that.

Court here took a recess until 1:30 P. M.

Afternoon Session.

EUGENE PITOU resumed the stand.

Cross-examination (continued).

By Mr. Lane:

Q. Just when did you see any scaffolding device of the type about which you were talking, used in Erie, Pa.?

A. As I have testified, in the late summer or early fall
51 of 1914.

Q. Well, when was it—is that the nearest you can fix the date?

A. Practically, yes.

Q. Well, was it before the 30th of September?

A. I have been trying to think of that exact date, and that is about as near as I can come to it.

Q. You can't say positively that it was before the 30th of September?

A. I can't.

Q. What examination did you make specifically there? Did you go up on the scaffold?

A. I did not.

Q. How high was the scaffold from the ground at the time you examined it?

A. The scaffold platform was at the third story.

Q. And you saw it from the ground?

A. Yes, sir.

Q. And you made your model from your recollection of seeing it in that way, did you?

A. Yes sir.

Q. And when did you make that model?

A. Some time afterwards.

Q. Well, when?

A. Well, I would say within six months.

Q. Was it six months ago or four months ago?

A. Well, it was perhaps six months afterwards.

Q. That would be then, sometime in June or July that you made the model?

A. I don't recall the exact date.

Q. Is that the only time that you were in Erie, when you saw that in use there?

A. I have been in Erie before, but the devices were not then in use.

Q. You saw the device some time in the fall of 1914, and you saw it three stories up?

A. Yes, sir.

Q. And you made this model from what you saw on that one occasion?

A. Yes, sir.

52 Q. How many of these devices were there?

A. I would say twenty.

Q. Twenty all told?

A. What do you mean by devices?

Q. I am speaking of the hoisting devices that are in that scaffold —that is, the frame which you have been talking about.

A. I mean twice the number there—there were twenty machines.

Q. Were they all alike?

A. Yes, sir.

Q. So far as your observation went, they were all alike?
A. Yes, sir.
Q. And you made no measurements of the platform, did you?
A. Absolutely none.
Q. No measurements of the device?
A. No measurements whatsoever. I was on the sidewalk.
Q. So that you couldn't have made any measurements?
A. I couldn't, no.
Q. Do you mean to tell the Court that this device, Plaintiff's Exhibit No. 5, represents the construction that you actually saw there, with any substantial degree of accuracy?
A. The elements that I was interested in, yes, sir.
Q. But that doesn't show the complete device at all, does it?
A. It is not necessary to show the complete device.
Q. How much longer were the putlogs in the structure that you saw in Erie, Pa., than the width of the distance between the hoisting device, if you remember? That is, how much did they stick out beyond the hoisting device?
A. A few inches.
Q. That is your estimate of the amount?
A. Yes, sir.
Q. As a matter of fact, didn't they stick out over sufficiently so as to hold the plank beyond the hoisting device, on the inside?
A. They may have.
53 Q. So that the hoisting device may have been in towards the inner side of the platform at least the distance of one plank?
A. It may have been, yes sir.
Q. On both sides, outside and in?
A. Yes, sir.
Q. Wasn't there a plank on the outside of the hoisting device, on the outer edge of the platform, in that construction?
A. The actual plank was for the masons to stand on.
Q. There isn't one running along on the outside?
A. No, sir.
Q. You are sure of that, are you?
A. Yes, sir.
Q. But you are not sure there wasn't one on the inside?
A. I say I don't know; there may have been one.
Q. You don't pretend to say that this represents the proper dimensions of the construction, do you?
A. No, it doesn't attempt to show the dimensions. As I remember it, it could be very easily changed so that a plank could be inserted from the inside next the wall
Q. But you don't know how it was used in that regard?
A. I don't recall that.
Q. How were the putlogs notched in the construction at Erie, if at all, relative to the way in which they were positioned in connection with the hoisting device? Weren't they notched so that the hoisting device set in the putlog at each side?
A. Well, if the putlog was too wide, it would have to be notched

to fit into the drum frame; otherwise it could pass in without notching.

Q. You don't know how it was in that construction?

A. No, sir, I don't recall.

Counsel for plaintiff here move to strike out the last two answers of the witness as merely hearsay, and therefore, incompetent
54 and irrelevant.

The Court: He has already explained that he does not know. I don't think it is material but it may remain.

By Mr. Lane:

Q. How high was the brick work in that building?

A. As I recall it, there was one story of the brick set from the third floor and then there was some stone work below. I don't remember about the stone work; I wasn't interested in that.

Q. Weren't the inner ends of the putlogs in that device resting directly against the building, so far as you know?

A. They may have been; I can't say.

Q. How do you know that these devices were used by the Liebel-Binney Construction Company?

A. There was a sign up there.

Q. That's all you know. You don't know that Liebel-Binney Construction Company as actually using them, except that they had a sign up that they were doing the construction?

A. I knew from other sources that they were the builders, and that they were using these machines.

Q. How did you know that they were using these machines?

A. I was told so by the superintendent on the job.

Q. That's the only way you know it?

A. Well, he was in their employ as superintendent.

Q. Who was he? What was his name?

A. I don't recall his name.

Q. Did you on any occasion go to the superintendent that was on that job, before these devices were put up at all, and try to lease him some of the devices of your company, the Patent Scaffolding Company?

A. I did

55 Q. Did you say on that occasion that the defendant's devices which he had there, weren't of any value at all, and they wouldn't stand up successfully?

A. I can't say as to that. Do you want my opinion?

Q. Yes.

A. My opinion isn't very high of the devices in question, and I may have said that.

Q. Then you probably told him that they weren't of any practical value, did you?

A. Well, I may have used a salesman's arguments to show the advantages of our machines. I can't recall the exact conversation.

Q. And that was prior to the time you began this suit?

A. Yes, sir.

Q. And prior to the time you knew how they were going to be used there?

A. I knew how they had been used previous construction.

Q. But you didn't know how they were going to be used on that particular job?

A. I couldn't tell that.

Q. How many sides of the building were these scaffolds on at Erie?

A. I am not sure.

Q. You took no photographs of the building with the scaffolds on at that time, *didn't* you?

A. Yes, photographs were taken, but I don't have them in my possession. I have seen them.

Q. Were they taken in your presence?

A. No, sir, they were taken by a local photographer in Erie.

Q. And at the time you saw them there?

A. No, they were done under instructions from New York to the photographer.

Q. When, relative to the time that you saw these devices before they were put into the scaffold at all, did you notify the counsel of the New York Scaffolding Company about bringing this
56 suit?

A. I can't say exactly, but upon my return from my first trip to Erie. I conferred with him about it, and he said that no suit could be brought until the devices were actually hung and an infringement had occurred. And then on my next trip to Erie, I saw these devices hanging and notified him and the photographs were taken, upon my statement, and upon those photographs, as well as my statement, the suit was brought.

Q. Does the New York Scaffolding Company have any agreement or arrangement with the Patent Scaffolding Company, of which you are secretary, to bring all suits for infringements, under its patents?

A. Yes, sir.

Q. They have to prosecute the suits whenever they are notified by you about them?

A. To protect their patents, yes, sir.

Counsel for defense, in connection with the testimony of the witness, offers in evidence a slip showing the marking of the device put out by the Patent Scaffolding Company under leases, which was offered in evidence during the taking of depositions upon the part of the defendants, and Defendant's Exhibit No. 7, and is now marked as Defendant's Exhibit "B" of this date, the same having been substantiated by this witness.

Objected to by counsel for plaintiff, that the slip itself is entirely immaterial and irrelevant.

The Court: I don't think it accords with what the witness has admitted. I am not so clear about the language of the witness, al-

though I think his admission was that the language of the slip was on his apparatus.

57 By Mr. Lane:

Q. This circular, which I now hand you, and which is marked, "Safety. Where Capital and Labor Are One. The Patent Scaffolding Co.," is a pamphlet put out by the Patent Scaffolding Company, of which you are secretary, isn't it?

A. Yes, sir.

Q. And how long has your company been issuing such a circular?

Objected to by counsel for plaintiff.

The Court: The objection is overruled, the question going to show the interest of the witness.

Mr. Goepel: Does that mean that circular or any circular?

Mr. Lane: That circular, or ones identical with it.

A. I don't recall the exact date of the issuance of that circular, but the second edition of this circular was issued in December, 1913, when this first edition was exhausted, requiring a second issue.

Q. This appears on its face to have been issued in August, 1912. Isn't it a fact that it was issued as early as that?

A. Yes, since you show me that, that was the time.

Q. And how long had the Patent Scaffolding Company been leasing devices like that shown in that circular, prior to the issuance of this pamphlet, in August, 1912?

Mr. Goepel: I think counsel is making the witness his own in this examination. This is away beyond any interest in this particular case.

58 The Court: I don't know what is in that particular circular. There may be something that tends to effect the credibility of the witness.

A. There are several different devices in this circular.

By Mr. Lane:

Q. Is the device shown on pages 10, 11 and 13 the one on which the gold medal referred to in that pamphlet was awarded?

A. Yes.

Q. And when was that award made, if you remember?

A. I think it was in 1911.

Q. What time in the year?

A. I think it was December, 1910.

Q. Does this refresh your memory—"November 21, 1910"?

A. Yes, that is the device shown in the award.

Q. And that was the device shown in these pages to which I have referred you, on which the award was made?

A. Yes, sir.

Q. And for how long a time prior to the award of November 21,

1910, was the Patent Scaffolding Company leasing the device shown on these pages of the circular?

This is objected to by counsel for plaintiff as going far beyond the cross-examination. This device is not in this case.

The Court: I will overrule the objection and let the evidence in, and note an exception. That is pages 10, 11 and 13.

A. Previous to that time the device was made in a different way.

59 By Mr. Lane:

Q. How long prior to that time were they made, so you could get an award on it? They must have been in use for sometime, or you couldn't have got the award, could you?

A. That is correct.

Q. Well, how long had they been in use prior to November 31, 1910, as shown in these cuts, and leased by your company?

A. Two years or so.

Q. At least two years. That is, as early as November, 1908?

A. Not exactly that same form; not without modification. Our devices had been in use for two years previous to that time to receive this award, but they hadn't been used in the manner they now use them.

Q. How do they differ?

A. Previously, when we first issued our devices, they were irremovably riveted together.

Q. They weren't riveted together in 1910?

A. No, sir.

Q. And not in 1909?

A. Well, I would say a short time before the awarding, the irremovable riveting had been removed. Before that they had been riveted.

Q. Well, before when?

A. Well, I would say in 1909.

Q. What time in 1909—July?

A. I don't recall exactly when it was discontinued. I would say about the beginning of 1910, we no longer riveted the machines together.

Q. But you were putting some out in 1908, '9 and '10, without their being riveted?

A. No, sir; only just before the award was made, early in 1910, we were using that method.

Counsel for plaintiff again desire it noted of record that counsel for defense is again making this witness his own witness.

60 The Court: Of course, counsel must not rely upon cross-examination to make out his case.

By Mr. Lane:

Q. When was the building put up which is shown on page 13 of this circular to which I have referred?

A. I can't state from my own knowledge.
Q. Wasn't that actually put up in 1908?
A. I can't state. The photograph was forwarded from Chicago.

The pamphlet to which the attention of the witness has been called, has been marked as Defendant's Exhibit "C" of this date and offered in evidence.

Counsel for plaintiff object to any part of this pamphlet being offered, except the parts shown to the witness.

Objection overruled.

Exception noted.

Redirect examination.

By Mr. Goepel:

Q. You spoke of having made this model, Plaintiff's Exhibit No. 5; do you recall for what particular purpose you made that?
A. Yes.
Q. And what was that?

Mr. Lane: He has already testified to that; that it was made for the purpose of this suit.

By Mr. Goepel:

Q. What was the particular purpose?
A. The particular purpose was to show the U-frame pass-
61 ing around the putlog. And the other mechanism isn't intended as a reproduction of the Whitney hoisting machine in any way whatsoever, except as a general outline sketch.

Counsel for defense object that this exhibit doesn't show anything that was actually used or constructed by the defendant in Erie, Pa., and certainly not prior to the commencement of this suit, so far as the record shows; and it is, therefore, incompetent and irrelevant.

Objection overruled.

Exception noted.

Q. Are there any machines of the New York Scaffolding Company that use the U-shaped frame, which are not marked in the way you were inquired of in your cross-examination?
A. There are.
Q. And about how many of those are there?
A. Several hundred.

This is objected to by counsel for defense unless the witness shows that his knowledge of that is directly obtained from the New York Scaffolding Company. He is not directly connected with that Company in any way, and therefore it is incompetent and irrelevant.

The Court: It is a question of how he obtained the knowledge.

By Mr. Goepel:

Q. How did you obtain the knowledge that you have just testified to, to the effect that there are several hundred machines of the New York Scaffolding Company with the U-shaped frame, which
32 are not marked in the way inquired about?

A. Directly.

Q. What do you mean by that?

A. From my own personal knowledge.

Q. State the circumstances, briefly?

A. I know that there are now machines in Atlanta, operated by my company, that are not marked as heretofore described, which belonged to the New York Scaffolding Company.

Q. And how are those machines used by the New York Scaffolding Company, or any one acting under that company; what is the position of the machines with respect to the putlogs and with respect to the building?

A. They are used, as I have testified here, that the Whitney machines are used.

Q. And just state briefly what you mean by that?

The Court: He has already stated how the one is used. Now he says that is used just like it. Why should he go into that?

By Mr. Goepel:

Q. Were those machines in use and unmarked before the New York Scaffolding Company acquired those machines?

Objected to by counsel for the defense as incompetent, immaterial and irrelevant.

Objection overruled.

Exception noted.

A. I believe they were.

Counsel for the defense move to strike out the answer as stating a conclusion of the witness.

The Court: The motion is overruled. It doesn't amount to very much.

33 Q. Who used them before the New York Scaffolding Company required them?

A. The Henderson Scaffold Hoist Company.

Q. Since that time has the New York Scaffolding Company used them?

A. Yes.

Q. You were shown a patent, No. 854,959, to Murray. Do you know why some of the machines have the number 854,959 on?

Objected to by counsel for defense.

The Court: That may be answered yes or no.

A. I do.

By Mr. Goepel:

Q. Please state why they are so marked.

Objected to by counsel for defense as incompetent and immaterial and having no bearing on this controversy.
(Question permitted.)

A. To evidence the patent shifting claim indicated in the Murray patent.
Q. Do you know personally why the New York Scaffolding Company marked them in that way?
A. Yes, sir.

By Mr. Lane:

Q. I suppose the only way you know why the New York Scaffolding Company marked them so, is that they told you so?
A. Yes, sir.
Q. Who told you?
A. The officials.
Q. Who?
A. Well, the president.
Q. Well, who was he?
A. Mr. William E. Corne.
64 Q. Is he the man who told you that?
A. I said the officials. I don't remember any particular officer telling me that.
Q. You don't have any particular recollection of any man in that company telling you their reason for marking their patents so, do you?
A. Well, I don't recall which one of several. It was a matter of common knowledge to me.
Q. Just how many patents did you see in Atlanta, Georgia, that were not so marked?
A. I think there were about 300.
Q. Are they being used there?
A. They are in the warehouse.
Q. They are not being used at all at the present time?
A. The last ones that were used were about two months ago.
Q. Are there any devices which are marked with any patent number that are leased by the Patent Scaffolding Company, which have any other mark than the mark of the Murray patent?
A. Yes.
Q. What devices are marked with any other mark?
A. I think some have the Henderson mark.
Q. Well, I want to know what you know. Are there any others that you know of that have any other mark than this Murray mark?
A. Yes.
Q. What?
A. The Henderson.
Q. Where?

A. At Atlanta, Georgia.
Q. Can you produce one?
A. Yes, sir.
Q. Will you do so?
A. I will.

Counsel for plaintiff offer in evidence certified copy of the opinion in the case of the New York Scaffolding Company v. Egbert Whitney, at No. 4215, May Term, 1915, of the United States Court of Appeals for the 8th Circuit.

65 Offer objected to by counsel for defense as incompetent, immaterial and irrelevant, as the record in that case plainly shows that the final decree has not been entered, and it is therefore objected to as being only a part of the record in the case.

Objection sustained.

Exception noted.

Counsel for plaintiff offer in evidence a printed copy of the transcript of the record in the case of the New York Scaffolding Company v. Egbert Whitney.

The Court: What is the purpose?

Mr. Goepel: To establish the bill of complaint, the answer and the evidence and the patent in suit and the claims relied upon, as res adjudicata.

This offer is objected to by counsel for defense, unless it is a certified copy.

The Court: Isn't it a certified copy?

Mr. Goepel: No, sir, it is not certified, but I can produce a certified copy later.

The Court: The objection will have to be sustained.

GEORGE R. WHITNEY, a witness called on behalf of plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. Goepel:

Q. Please state your age, residence and occupation.
A. Age, 42; residence, Lincoln, Nebraska; President, Central National Life Insurance Company.
Q. What is the name of your father?
A. Egbert Whitney.

66 Q. Do you know whether he is a defendant in a case entitled the New York Scaffolding Company v. Egbert Whitney, pending in the United States District Court of Omaha, Nebraska?

Objected to by counsel for defense, as not in accordance with the facts, as there is no such case pending, and the question is therefore irrelevant.

The Court: Well, it is a question of whether the witness knows. If he knows, he may so state.

A. No, I don't really know. I have never been there, or anything like that.

By Mr. Goepel:

Q. You mean you don't know whether your father is a defendant in that case?

A. He is a defendant in a case in St. Louis, so he has said, and has gone there. That's all I know about it.

Q. Isn't it a fact that your father and you, when associated with him in business, put out scaffolding machines like this scaffolding machine?

A. I am not associated with him in business.

Q. Weren't you at one time?

A. No, sir.

Q. Do you know whether your father made and put out machines like this Whitney machine?

Objected to by counsel for defense.

The Court: Well, it is a question of whether he knows or not. I will permit the question.

A. I don't think that he has.

67 By Mr. Goepel:

Q. Hasn't he put them out in the past, or within the last two or three years?

A. Well, really, I don't know. I can't tell you. There's a machine that he has put out that resembles that somewhat, but I am not a mechanic enough to know whether it was that machine or not.

Q. Hasn't he put out within the last two or three years, say, machines known as the Whitney Scaffold Hoist Machine?

A. Yes, sir.

Q. Have you ever seen any of those machines used?

A. No.

Q. Have you any personal knowledge as to the fact that your father was paying the expense of the patent litigation in this suit?

A. Yes, he is.

Q. Have you any personal knowledge as to whether or not he has indemnified or agreed to indemnify the defendant, the Libel-Binney Construction Company?

A. I don't think that he has; but I don't know.

Q. Didn't you hear your father state that at Omaha, Nebraska?

A. I did not.

Objected to by counsel for defense as hearsay.

Objection sustained.

Cross-examination.

By Mr. Lane:

Q. You have been asked about the Whitney Scaffold Hoist Machine. When, if at all, do you know that your father discontinued the manufacture and sale of that machine entirely?

A. The manufacture was ceased something like eighteen months ago. Which was about the time——

68 Q. Then you know that the machines of that name were discontinued eighteen months ago?

A. Yes, there hasn't been any manufactured since that time.

Q. Do you know whether your father has leased any machines of this type during the present year?

A. He has not.

Mr. Goepel: I would like to ask the Court again to accept this certified copy of this opinion that I previously offered.

The Court: What is the purpose?

Mr. Goepel: We want to establish first that Whitney was the defendant in that case, and that he intervened in that case, the same as he did here, and that the patent in suit is the same as the patent in suit here; that Claims 1 and 3 in that case were the same as Claims 1 and 3 here.

The Court: Is it your idea that that is established by a certified copy of the opinion alone?

Mr. Goepel: The facts are established by that opinion.

The Court: If you want to prove that the same question arose between the same parties in a former case, you must show it by something more than an opinion.

Mr. Goepel: That opinion refers to a decree to be issued. It says, "Let a decree issue."

The Court: But until the decree is issued, the opinion is of no worth at all.

69 Alfred E. Davidson, called on behalf of plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. Goepel:

Q. State your age, residence and occupation.

A. Age, 55; residence, New Rochelle, New York; occupation, furnishing scaffolding to builders.

Q. Please state what your early connections were with scaffolding.

Mr. Lane: I object to this. This is the same matter that was gone into before in the deposition of this witness.

The Court: Of course, if he is called as a fact witness, you should proceed to the facts.

Mr. Goepel: Well, this is a fact witness, to give your Honor an understanding of what the prior art was.

The Court: Is the burden on the plaintiff to show the state of the prior art? Try your case in your own way; but you can't open up the prior art in the case in chief and then also open it up in rebuttal.

Mr. Goepel: But if I understand it correctly, we can bring rebuttal testimony to explain away the testimony of the defendant. We don't want to double up the proof.

A. In 1881 I came to New York and went to work for a firm that had just started in furnishing this kind of equipment to builders. I have been connected with that particular concern ever since, for more than thirty years. The practice of building bricklayers' scaffolds at that time in New York City was to use poles lashed together with ropes, with putlogs running from the outer ledger and
70 into the wall of the building; planks being put on those putlogs and horses on top of the planks to the height of one or two tiers, and then other putlogs put out, and the same practice followed up to five or six stories, which was about the height of the building. If they were higher buildings, they had thrust-outs that they placed out through the window openings if they were convenient; if not, they put them right through the wall and placed their planks on these thrust-outs and built up in that way. This practice continued until along in the early part of 1900, when a new device came on the market, or a new structure, and, in place of building up from the ground, they hung a rigid iron frame from the upper stories of the building. That could be used in three or four stories sometimes. It was heavy, inconvenient to handle, and didn't meet with very great success, although it did seem to be an improvement over the old poles. Then there came another form of scaffolding, which was a suspended wire platform scaffold, suspending the wires from the top of the building.

Mr. Lane:——

Q. Will you state when this was?

The Court: It was after 1900 sometime, if I understand the witness. Proceed.

A. (Continuing.) Putting putlogs across these wires at whatever height they wanted, and securing them by means of clips on the putlogs, and laying planks on them. You could go up with that to practically any height. At first it seemed to be a very dangerous way to scaffold, and it was pretty hard to introduce. But there
71 were a great many of the large buildings there built by this process. And it is used today in some buildings. Then there came the Carnaugh overhead scaffolding machine. That was a machine placed on out-riggers on top of the building, wires lowered, and a platform placed on the cross-beams at the bottom of the building. And this was operated by a rope from the scaffold; and this rope would raise this platform up to any desired height until it reached the out-rigger, the machines on top. That machine became fairly well used, after being introduced, and was apparently a great improvement over any other. Then Murray came in the market with

his platform machine; a machine operated from the platform, the fastening of the wire that supported the platform being from above, the wire being secured to the out-riggers from the upper part of the building. Then the Henderson machine, supported by cables from the upper part of the building, and similar in a great many respects, except that the machines were placed in the opposite position, enabling you to make a scaffold of any width, which would seem to be the latest.

Q. What can you say as to the relative dangers and safety of the use of the poles scaffolds that you testified about?

A. Well, the poles scaffolds were certainly a very dangerous scaffold, because, hung by ropes, and there were many reasons why some part of it should collapse, and they did collapse and many men were killed.

Q. Do you know of any specialized workmen who made a business of installing such poles scaffolds at that time?

A. No. The firm that I was with hired these poles to builders, sold them the rope, and their laborers on the job erected the scaffolds and took them down again.

72 Q. And were these ordinary laborers or special ones?

Objected to by counsel for defense, as incompetent, irrelevant and immaterial.

Objection sustained.

Q. You have testified about timber scaffolds. What can you say as to the relative danger or safety of those?

Objected to by counsel for defense, as irrelevant and immaterial.

Mr. Goepel: That is a proper question to show the prior art.

The Court: Why is it necessary? Of course, every improvement that is made is either made because of facility of operation or the safety with which it may be made. It is presumed the later devices are simpler than the earlier and that they are more easily operated. And isn't it apparent from what the witness has stated that they are?

Mr. Goepel: We want to show how gradually the art developed.

The Court: He began with 1881 and got down to 1900 before there was any change, and then he covered from there on. I suppose the change in the method of scaffolding was largely brought about by a change in the character of the buildings and the methods of building?

A. Somewhat.

By Mr. Goepel:

Q. Were any scaffoldings used in the art that required,
73 after the completion of their use, any pointing up of the wall of the building?

Objected to by counsel for defense, as incompetent, irrelevant and immaterial.

The Court: There is no question but what that was necessary in the old form. Anybody who has ever gone around with his eyes open would see that. But the witness may answer the question.

A. There are. They use a painter's scaffold rigged with rope and sometimes a ladder laid across it, held up by pulleys and washed down the buildings and pointed it up.

Q. What can you say about the painter's scaffold that you speak of? Is that one in general use?

A. It is pretty generally used by painters. It is never used, to my knowledge, for real construction work.

Q. What do you mean by real construction work?

A. Building the walls of a building, carrying the bricklayers and brick and mortar and heavy work.

The Court: Well, it isn't large enough to have the materials for work on it. And it has a vibration that interferes. That is plain enough without testimony.

Cross-examination.

By Mr. Lane:

Q. The painter's scaffold to which you have referred is fairly depicted in the patent drawing of patent No. 382,252 issued to Barr and Casperson May 1, 1888, isn't it?

A. Well, I'm not very good at drawings, but I think so.

Q. How would it differ? They had end members like this
74 end member here, shown in Fig. 2, hadn't they?

A. Well, I suppose the general plan of that is something the same.

Q. Let me understand this, so we can get this clear. As I understood, the old painter's scaffolding which you spoke of as being actually used is one that had a putlog running back of the scaffold, and then it had ropes from each end of the putlogs or irons, as the case might be, such as shown in this patent, and then at the upper end of these ropes, each one of these ropes, there was a rope attached which connected with a pulley, and those putlogs had ladders or boards or planks large enough to support the painters. Is that the practice that you referred to?

A. No.

Q. What is it?

A. They used an iron bale and put a 25-foot ladder—that's the usual practice in New York City; in Boston they use just one narrow ladder; frequently in New York City they use a scaffold about twenty-five feet long and about twenty-eight inches wide, and that is slipped into a bale and comes right up this way and that is hooked there.

Q. Then it is substantially like this drawing here?

A. I say there are some things there that are like it.

The Court: Is it necessary to go into that?

Mr. Lane: As long as they put this in as art, I think it is proper to show this.

The Court: Proceed.

By Mr. Lane:

Q. Will you make a sketch of the painter's hangers that are used in connection with the ladders, so that we will understand just what we are talking about?

A. I will try to.

75 Q. Or have you any device or cut here that will show it?

A. I rather think I have.

Q. If you will produce it, it will save time, perhaps.

A. I don't know that it will save time, I would have to go to the hotel to get it. I will try to make you a sketch.

(Witness makes sketch.)

Q. The sketch you have made, which I have marked "A" has a continuous loop of iron, marked "B," running all around it, and a platform was placed in position over the bottom member, which is marked "C"—there were two of these, there were a pair of these, one at each end of the ladder, on which the ladder was placed, and planks placed on top of the ladder. Is that correct?

A. That's about correct.

Q. And ropes or pulleys were connected with the upper end of this U-shaped or iron member "A" which ran to the top of the building, so that it could pull up the scaffold and lower it down at their pleasure. That is true, isn't it?

A. That's about it. One pulley.

Q. How long has that been done within your personal knowledge, twenty-five years? You are certain of at least twenty-five years, aren't you?

A. No, I wouldn't say twenty-five years.

Q. Well, twenty years?

A. I wouldn't say that.

Q. Well, don't you know if for fifteen years? I would like to get some information. You have testified as to your knowledge of the art, and I would like to get what you know about it?

A. Yes, I believe it has been used for a dozen or fifteen years.

Q. Does this substantially represent the form of scaffolding to which you have referred, the photograph marked by the

76 examiner taking depositions as "Defendant's Exhibit No. 12"?

A. This isn't the usual custom.

Q. Well, this is a very common form and practice, isn't it, and has been for twenty-five years?

A. Not as I remember.

Q. Well, hasn't that form of scale been used for at least twenty-five years, whether it was common or not?

A. I can't say.

Q. Well, how many years?

A. I don't know.

Q. Ten?

A. I don't know. I have seen something that looked like that.

Q. Well, when did you first see it?

A. I don't know.

Q. Prior to the time of this device with the timbers that you have been testifying about being put out?

A. I don't know.

Q. Well, prior to 1900?

A. I say I don't know the year. This is just some special thing. I don't know that I ever saw one just exactly like this.

Q. Well, substantially like that, it has been in common practice?

A. Well, something like it.

The photograph concerning which the witness has been interrogated was here marked as Defendant's Exhibit "D" of this date.

The Casperson patent, No. 382252, to which the attention of the witness was directed, was marked as Defendant's Exhibit "E" of this date; and both exhibits offered in connection with the cross-examination of the witness.

Counsel for plaintiff objects to the admission of Exhibit "D," except so far as the witness has testified to it, and also to the admission of Exhibit "E."

77 The Court: They are admitted for what they are worth.

The pencil sketch made by the witness is marked as Defendant's Exhibit "F" of this date, and offered in evidence.

Q. You have testified concerning some scaffolds which were supported by small iron rods with putlogs across between these small iron rods, and with scaffolds mounted on the putlogs at various intervals. Does the drawing in this Clarke Patent No. 673,384, of May 7, 1901, illustrate such a construction as you have referred to as being in the art and practiced at that time?

A. Well, it is similar. I imagine there are some changes in it.

Q. Well, what were the changes?

A. I don't know.

Q. You don't see any difference in the one you were talking about and that, do you? That is, you have your vertical bars, which are marked "B," you have putlogs extending across between these bars, which are marked "D," and these putlogs are secured by clamps to the upright members, just as you described, and then on these putlogs are placed platforms, just as you have described, weren't they?

A. That's the way it was built, whether it was exactly like that, I don't know.

Q. Well, it is substantially like that that was in common use at that time? That is one of the types you referred to, isn't it?

A. Well, it looks like that. I don't know that it is exactly like it.

Q. Well, how does it differ? I wish you would point it out, if you know so much about this scaffolding business?

A. Well, I tell you as to the mechanical end I don't know so much.

78 Q. You have been in the scaffolding business since 1881?

A. Yes, getting business and seeing that it was properly done and making delivery of it, but not from the mechanical end of it.

Q. But so far as you see these cuts correctly show what you speak of as the type in use in 1900?

A. As far as I can see, the Clarke structure is.

Counsel for defense offer in evidence patent No. 673,384, issued to Charles J. Clarke, May 7, 1901, and the same is marked as Defendants' Exhibit "G" of this date.

Q. You have also spoken of another type. I call your attention to a sketch, which has been referred to in this case during the taking of depositions as Defendant's Exhibit No. 1, Englar Sketch, and ask you to state whether the construction there shown also represents this Clarke type, which was used in 1901, as you understood it? I believe Mr. Englar was intending to represent that type, but whether he did it or not just exactly, I don't know.

Q. So far as you can see, it is all right, isn't it? There are no inaccuracies in it as far as you can see?

A. Well, I am not qualified to criticize it.

The sketch last shown witness was here marked as Defendant's Exhibit "H" of this date, and offered in evidence by counsel for defense.

Offer objected to by counsel for plaintiff, as incompetent and irrelevant.

79 The Court: When a witness undertakes to testify as to the state of the art and says he is not qualified to speak as a mechanic, his testimony is not as valuable as it otherwise would be.

By Mr. Lane:

Q. You spoke of the Cavanagh patent. I hand you the Michael Cavanagh patent of August 8, 1905. Is the construction shown in that patent the construction to which you referred as the Cavanagh construction of 1904 or thereabouts?

A. Well, I am not prepared to say.

Q. How does it differ? Is that what the Cavanagh that you referred to as designating a particular type of scaffolding device?

A. That is the Cavanagh I referred to. I never knew——

Q. Well, is that the device you referred to?

A. I should think so. There seems to be a chain here operating it instead of a rope.

Mr. Goepel: There is one other objection to be made on the line of cross-examination. Counsel is showing the witness all these patents, and he hasn't qualified this witness along mechanical lines.

The Court: But this is cross-examination.

Counsel for defense offers in evidence patent just identified by the witness, the same being Cavanagh Patent No. 796,807, of August 8, 1905, and the same is marked as Defendant's Exhibit "I" of this date.

The Witness: I didn't identify that absolutely, did I?

By Mr. Lane:

Q. When was it that the Cavanagh type first came onto the market?

A. Well, the year I don't know exactly. It was about 1904, I think.

80 Q. The Murray type to which you have referred is correctly shown in Defendant's Exhibit "C" on pages 10, 11 and 13, is it not?

A. Yes, I would think it looks like the Murray type. I think it is.

Q. And that is a construction that the New York Scaffolding Company is putting out under the Murray patent, No. 854,959, is it not, except they have been improving their practice; but that is the type that has been marked under this patent?

Mr. Goepel: The witness only looked at one page.

A. I testified to page 13.

By Mr. Lane:

Q. But the same thing is true with respect to pages 10 and 11?

A. No; this was a much later cut.

Q. Well, it's the same construction as shown on page 13, isn't it?

A. The upper work looks similar, but this was a much earlier cut, and there have been changes in the manufacture.

Q. Well, how long have you been putting out the device shown on these three pages? This is the Murray type of construction, isn't it?

A. That is the general Murray type.

Q. That is the type that you have designated here as the Murray type, isn't it?

A. I say that this type here looks to me like our early Murray type (witness referring to page 13 of Exhibit "C"). I say that here are machines—this is a very much later picture. We are handling this part of the machine differently. (Witness refers here to pages 10 and 11 of Exhibit "C".)

81 Q. Well, the type that is shown on pages 10, 11 and 13 is the type that you have referred to in your direct examination as the later Murray type?

A. I referred to this type (page 13) because I know this as an early picture. This type, on pages 10 and 11, we are improving. And this is the type of The Patent Scaffolding Company.

Q. Well, what is that type? Under what patent is it made, do you know?

A. I don't really.

Q. How does it differ from the Murray type of device, just where, in what refinement? I am speaking as to how this construction shown on pages 10 and 11 differs, if at all, from that shown on page 13, either in use or in construction.

A. Well, I believe that this one shown on page 13 is a riveted structure right through here (pointing to the putlog) underneath; and this later type isn't. You can make that any width or turn it

any way. And this is separate, handled separate and shipped separate (witness indicating putlogs on pages 10 and 11).

Q. The one that you call the Murray type is shown in Murray Patent No. 854,959, isn't it?

A. Well, if that is securely bolted, I imagine so. These are fine points. I don't qualify as an expert, because I am not.

Q. If I understand you correctly, in the Murray type of hoisting mechanism there was a bottom member with two upwardly extending side members, to the latter of which the drum was rotatively attached. Isn't that so?

A. My understanding of the early type was that there was a piece riveted right across there and made the putlog at the bottom of the machine.

Q. Well, were the side bars and the bottom member continuous in one piece?

82 Mr. Goepel: Where—in that picture or in the Murray type?

The Court. He is referring to the answer of the witness with respect to the previous question—that is, the early Murray type.

Mr. Lane: Exactly.

(Question read.)

A. I don't think so.

Q. You don't know?

A. No, I don't know.

Q. Then when was it after 1900 that the hanging device with the clips under the planks and secured with the fastening device with the hanging members put in use, within your knowledge?

A. I think along sometime about 1903.

Q. As early as 1903?

A. I wouldn't be positive as to that.

Q. Well, as early as 1904?

A. Yes, I am quite sure of that.

Q. These high, rigid, iron frame constructions, you say that about 1900 those were put in?

A. I say early in 1900, some of the early years.

Q. Well, 1900, 1901, '02 or '03?

A. I don't know which year.

Q. Well, as early as 1903?

A. I should think so. I can't testify as to years exactly.

Q. Well, when was the Murray type put into use, with the wire hung from the out-riggers and having hoisting devices on the platform by which the platforms were raised and lowered?

A. Well, I don't know. I wasn't interested in it at all; I was competing with the wooden scaffolds, and that's the only way I would have to remember. And I knew they were on the market, and I was watching them reasonably carefully. But I didn't keep track of the years.

83 Q. Well, about when?

A. Well, I know they were on the market in 1908, because then I came in and helped to form a company.

Q. When did you become interested in the New York Scaffolding Company?

A. In May, 1908.

Q. And you started at that time putting out this Murray type of device, with the U-shaped frame, with putlogs and at the lower end a hoisting device by which the device was lowered and raised, did you?

A. At that time it was the Murray device that we first started to handle.

Q. And you have been putting that out ever since?

A. Except that we have improved our service and machine.

Q. And you have been marking them continuously that way, as the Murray patent, ever since you started?

A. Not with the number, I think.

Q. With what patent are they marked?

A. I don't know the marking.

Q. Just what does the New York Scaffolding Company do?

A. Well, the New York Scaffolding Company, when it was first formed, rented machines.

Q. Well, what does it do now?

A. As far as I know, the only thing that they do now is to lease some of their machines to other people that again lease them to builders and operators.

Q. And you don't know how these are marked, with what patent?

A. I don't know the patent. In fact, I didn't know that they were marked.

Q. Then you assumed they were being put out without any mark, until you heard of it?

A. Well, without any patent mark. But personally, I didn't know.

Q. How long have you held your present office in the New York Scaffolding Company?

84 A. I have no office in the New York Scaffolding Company.

Q. Well, which one of these companies do you have an office in?

A. I am the president of The Patent Scaffolding Company.

Q. That is a lessee of the New York Scaffolding Company?

A. They operate machines.

Q. Well, who makes these machines? I would like to find that out, if I can.

A. Well, the Patent Scaffolding Company makes machines and they have machines made for them.

Q. They don't make them themselves?

A. They can and do.

Q. Well, are they making them now?

A. Well, I don't think there is anyone at present making machines now. There is no building being done in the country. There are more machines in the country now than will keep the building trade supplied for some time. They are in the warehouses now.

Q. You have stated that the cut on page 13 of Defendant's Exhibit "C" was made earlier than the cuts on pages 10 and 11. When

were the second set made, those on pages 10 and 11, and how much later than the one on page 13?

A. Well, I think we got up this book in 1912; and I don't know just when the cut was made. I expect in this book was the first one of that kind.

Q. This is shown as being August, 1912. Does that refresh your recollection?

A. I think that's our first book, isn't it?

Q. And you haven't any positive recollection that the cut on page 13 was made earlier than the cut on pages 10 and 11, have you?

A. Yes, it was earlier, because that is one of our earlier pictures.

85 Q. Well, how much earlier was the one made on page 13 than that shown on 10 and 11?

A. Well, it must have been made a year or two earlier.

Q. And these devices were being sold before you had any negotiations whatever with Henderson or the Henderson Company weren't they?

A. They were not being sold at all.

Q. Well, they were being made and leased?

A. In 1908 we were leasing machines.

Q. So that was prior to any time you had any dealings with Henderson?

A. We were leasing that machine on page 13.

Q. And that was being done right along from 1908 until 1911 or '12, when you had some dealings with Henderson—isn't that so?

A. I can't say to what extent, because we were using other overhead devices.

Q. I understand, but The Patent Scaffolding Company was leasing those machines of the Murray type long prior to the time of Mr. Henderson—I am speaking of Henderson, the patentee of the patent in suit?

A. That is correct, excepting the long time.

Q. Well, you started as early as 1908, and continued right straight on, didn't you?

A. Leasing machines.

Q. Yes, and you are doing so at the present time?

A. Yes.

Q. Did you or any of the companies that you are connected with ever actually mark any device with the Henderson patent number?

A. I don't know personally that we did, but it seems—I have heard about it lately.

Counsel for defense move to strike out the last part of the answer, as hearsay.

86 The Court: Well he says he doesn't know.

By Mr. Lane:

Q. What other companies are you connected with in this scaffolding business besides The Patent Scaffolding Company.

Mr. Goepel: Is that material?

The Court: It may have a bearing by testing the knowledge of the witness as to what he has testified to in chief. He may answer the question.

A. I am connected with the Cheseboro, Whitman Company.

Q. Aren't you a stockholder in the New York Scaffolding Company?

A. Yes, sir.

Q. Aren't you a stockholder in the American Safety Device Company?

A. I think I am.

Q. How many more are you a stockholder in, in the scaffolding business?

A. I am a stockholder in a few railroads and mines, and a whole lot of things.

Q. I said scaffolding business.

A. I don't know. I have been a stockholder in some. At the present time I am a stockholder in three, I think.

Q. The Murray device is giving satisfaction under your lease, isn't it?

A. We think we have been getting pretty good satisfaction ever since we have started. We have revolutionized the business.

By Mr. Goepel:

Q. What did you just mean when you answered the last question about the Murray type?

A. What is that question?

87 Q. What did you mean when you answered the last question and said that the Murray type was giving satisfaction?

A. I think my mind ran into more than just the type. With all these scaffolds it is organization and service and improved methods.

Q. Well, do you mean by the Murray type a structure like that shown in the Murray Patent 854,959, or do you mean a structure like that shown on page 11 of the booklet, Defendant's Exhibit "C"?

A. Well, now, I mean this scaffold, this machine. This is what we are doing. (Witness indicates page 11 of Defendant's Exhibit "C.")

Q. And that is what you meant in that last answer, was it?

A. Yes, sir.

Q. Now, in your direct-examination, when you referred to the Murray type, what then did you refer to?

A. I referred then to the very earliest machines that we used.

Q. And what did that resemble more, the patent or page 11 of Defendant's Exhibit "C"?

A. Well, that resembled more the patent.

Counsel for defense moves to strike out the answer, as incompetent, the witness having stated that he is not competent.

The Court: The answer may stand.

By Mr. Goepel:

Q. In your direct examination you spoke of different advances made in the art from the pole to the timber, to the Clarke and so on. Did you mean to qualify as an expert on the detailed mechanics, or only as one who is generally familiar with the gradual advance of the art?

88 Objected to by counsel for defense, as the qualifications of the witness speak for themselves.

The Court: I will overrule the objection and permit the witness to answer, although I think he has already answered it.

A. I didn't mean the fine mechanics of the art. I have been out on the job all over, watching general methods, the dangerous ones and the safe ones.

By Mr. Goepel:

Q. You were shown an exhibit known as the Englar sketch. Did you ever see any structure like that in the art?

Objected to by counsel for defense, as leading.

A. I think I have testified that while it had a general appearance I wasn't qualified to criticise it. However, I say right here that this is not the way that was used.

Q. In what respect?

A. Well, it seems to have a bolt exactly through each one of these.

Q. What is the largest number of stories of any building that you saw scaffolding of the Clarke type on?

Objected to by counsel for defense as incompetent, immaterial, irrelevant and leading.

The Court: Well, is it re-direct?

Mr. Goepel: I think it is.

A. I think I testified three or four stories. That was just about what they used them on. They never used them on very high work.

89 Q. Then did you ever see any structure like this Englar sketch, which is shown by Defendant's Exhibit "H," which has eight putlogs?

Objected to by counsel for defense, as leading.

Question permitted.

A. Not that I remember.

Q. Do you know if any of your machines are shipped out of your place to builders put up exactly like that shown on page 11 of Defendant's Exhibit "C" at the present time?

A. No; not now. It is taken down, with the drums separate and the putlogs separate, if they want this sort of scaffold.

Q. You mean that the frames themselves are sent out individually or separately from the putlogs—is that what you mean?
A. Yes.

Recross-examination.

By Mr. Lane:

Q. How long has that been the practice by The Patent Scaffolding Company?
A. I can't say exactly; a number of years.
Q. Since 1909?
A. I can't say the year exactly.
Q. Had each of the devices which are shown in this circular, Defendant's Exhibit "C," on page 11, been marked under the Murray patent to which your attention has been called?
A. I don't know about the marking of the patents. I can't testify to that.

The Court: He has already answered that he didn't know about the marking.

90 Asher Blum, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. Goepel:

Q. What is your occupation and residence?
A. Occupation, patent attorney and expert; residence, 1227 Boston Road, New York.

Counsel for defense object to the taking of the testimony of this witness as an expert, a patent attorney not being an expert; and his testimony is further objected to, because he has been present and helping with the trial of this case. His testimony is therefore incompetent and irrelevant.

The Court: The testimony of an expert is of little weight when it comes in that way. You can examine him as to whether he has given special attention to this subject matter.

By Mr. Goepel:

Q. Please state briefly what your qualifications are which enable you to testify of mechanical construction?
A. In 1907 I graduated from college receiving the degree of B. S., and had a thorough scientific course, with special attention to advanced mechanics, besides practical laboratory work in all branches of physical and mechanical science. And thereafter I pursued a post graduate course in the Universities of Columbia and New York in pure and applied science, with special attention to advanced me-

chanics and the mechanics of structures; and my thesis for the degree of M. S. was accepted by the New York University.

The Court: You don't need to go any further.

91 Counsel for defense object to the competency of this witness to testify as an expert in this case.

A. I have not completed my answer. I have acted as a mechanical expert in Federal Courts in various patent suits, and have made a special study for the last two years of the structures here in issue and of the scaffolding art in general.

By Mr. Lane:

Q. Have you had any practical experience in putting up scaffolds or using scaffolds?
A. I have never erected any scaffolds.

Counsel for defense renew their objection to the competency of the witness.

Court here adjourned until Tuesday, October 12, 1915, at ten o'clock A. M.

And now Tuesday, October 12, 1915, trial resumed at ten o'clock A. M.; Mr. Clarence P. Byrnes being present also as counsel for plaintiff.

Asher Blum on stand:

By Mr. Goepel:

Q. Have you read the Henderson patent in suit, and do you understand the same?

Objected to by counsel for defense, as the witness is not an expert.

The Court: What do you desire to prove?
Mr. Goepel: Simply to show that he understands the Henderson patent and that the same structures are in the Henderson patent as are in the patent in suit.

92 The Court: Isn't that perhaps apparent? If there is no ambiguity in a patent there is no necessity for having an expert explain the patent, because anybody that reads the English language and has a fair amount of information knows what it is.
Mr. Lane: I would like to make the objection, for the purpose of preserving the record, that this witness has not shown himself qualified to aid the Court in this matter.

By Mr. Goepel:

Q. Have you examined Plaintiff's Exhibit No. 4, the Whitney machine, and do you understand the same?
A. Yes.

Objection renewed.

Q. Have you examined Plaintiff's Exhibit No. 5, and do you understand its operation?

A. Yes.

Q. Have you examined the Whitney patent 998,270, and do you understand the same?

A. Yes.

Q. Have you heard the testimony of Mr. Eugene Pitou, given yesterday, with reference to that patent?

A. Yes.

Counsel for defense object, on the ground that this witness has not been shown to have any knowledge of the use of this by the defendant in this case, and the testimony is therefore incompetent.

Mr. Byrnes: I think we ought to have in the record one complete picture of the defendant's device. Now, the Whitney patent contains it, and that is the simplest way that we can get a picture
93 of a complete defendant's device before the Court, and that won't take two minutes.

Mr. Lane: I don't know of any rule by which an expert is permitted to come in and testify concerning his interpretation of testimony given by a prior witness.

Mr. Byrnes: Mr. Lane knows what the defendant- have been using, and if he will stipulate that this device is what the defendants have been using, we will withdraw the witness. But when they have blocked every attempt to show what the defendants have been and are using, then I submit that we have a right to show that. I am talking about the proof of the defendants' own device. And we simply want to have this witness construe the statements here and state whether or not that picture is a proper showing of the device.

The Court: Well, put your question.

By Mr. Goepel:

Q. Please state whether or not the Whitney patent 998,270 shows the structure about which Mr. Pitou testified yesterday?

Counsel for defense object, to this question, as incompetent, immaterial and irrelevant, and calling for an answer based entirely on hearsay testimony, and as submitting to the witness, in the way of a leading question, a proposed structure which is not before the Court, and concerning which no testimony has been taken.

Objection sustained, and exception noted to plaintiff.

Witness withdrawn.

94 EUGENE M. CAVANAGH, a witness called on behalf of plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. Goepel:

Q. Please state your residence and occupation?

A. I am a resident of Brooklyn, New York. Occupation, scaffold rigger.

Q. When did you first start to rig scaffolds?

A. In 1904.

Q. What kind of scaffolds did you rig at that time?

A. Well, we called them the overhead machine.

Q. What did that look like?

A. It consisted of two channel irons, called out-riggers, which we fastened on top of a building, and put a machine in there with two drums, cables running down from the drums, down below, and put up a piece of angle iron on there, what we called the putlogs, and the planks were laid across these putlogs, used as a platform.

Q. Where were the drums located in that structure which you have just spoken of?

Objected to by counsel for defense, as incompetent, immaterial and irrelevant, unless it is shown to have some connection with this case.

Mr. Goepel: I want to show by this witness the general state of the art in 1904, and show to the Court the difficulties connected with the introduction of this kind of scaffold in the art.

Objection overruled.

A. The drums were on top of the riggers, with a cable coming down from the drums to the putlogs down below.

95 Q. To what extent during the year 1904, did you erect scaffolds of the kind you have just described?

A. We started in 1904 and we erected them right along quite extensively, but we had considerable trouble in introducing them to the trade.

Q. What troubles did you have in the introduction of that type of scaffolding?

A. Well, we would go to contractors with the machine and try to get them to use the machine, and they thought we were kind of foolish or crazy, said that the men wouldn't work on the scaffolds, because they swung a little bit, and we would have them seasick as they worked on the scaffold. That was one objection. Another objection was that the machine we used weighed about 150 pounds and had to be put out from the top and all the material had to be taken to the top; and they thought that the scaffold itself was so heavy that it would pull the frame of the building right out.

Q. Did you receive the work of installing such scaffolding from all the contractors or builders whom you approached?

A. Oh, no. There were some of them using the old thrust-out scaffold, a horse scaffold, and some of them were using a cable scaffold. We went to the fellows who used the old-style scaffolding the most. They were the ones that started to use our machines first.

Q. What do you mean by the old-style, first?

A. Well, the thrust-out scaffold, the pole scaffold, the timber scaffold that they would build right up the front of the building.

Q. After some of these people refused to take your scaffold, in what way did you introduce the machine to them?

A. Well, we had to put them out for nothing at first, to
96 get them to use our machines, at first. After they had been using them for awhile, they thought there was nothing like them.

Q. About when did you enter the employ of the New York Scaffolding Company?

A. About August, 1910.

Q. What kind of machines were used during the first time of your employment, during the latter part of 1910?

A. Well, they were using two types of overhead machines.

Q. What do you mean by two types of overhead machines?

A. Well, they were using a machine that I helped to install first, my father's machine. He sold out to them; and then they were using another machine, an overhead machine with drums just opposite to the way that the drums were on our original machine.

Q. What general way were both of those machines known by in the trade at that time?

A. Well, they called one the Cavanagh machine and the other the Murray machine at that time.

Q. Was there any other name that you used to distinguish these machines with respect to the position of the machines?

A. Well, the only names that I knew them by was the Murray overhead and the Cavanagh overhead; that's all.

Q. About the year 1911, what kind of machines were those used by the New York Scaffolding Company?

A. The machines that they are using at the present day.

Q. What did they look like?

A. Well, we called it a platform machine with a drum on the inside, and the outside of the scaffold and a U-shaped frame, with a putlog attached, going underneath, or through the frame, I should say.

Q. About when did you first start in to use this machine?
97 A. In 1911, we started in to use them, as far as I know.

Q. And what were your particular duties in 1911 in connection with such machines?

A. Why, I was a rigger and inspector, and a general handy man.

Q. Please state briefly just what you mean by a rigger or inspector, in connection with such machines?

A. Well, a rigger's duties are to deliver the machine on the job, and if everything is in readiness, the riggers will start and install the machines on the job.

The Court: Is it necessary to go into the duties of a rigger?

A. Well, to install machines on the job.

By Mr. Goepel:

Q. Then state briefly what you did to install such a platform as you speak about, using the machine that you spoke of just now?

A. Using the platform machine?

Q. Yes.

A. Well, the platform machines are installed by the rigger being brought to the top of whatever story they intend to put them out from. We get our riggers out from that floor. We get our riggers out, and then we go down below where the drums are and the putlogs and attach the putlog to the drum and put the putlog through the drum and in such a way that we stand the drum up afer the putlog is put through and run our cables up to our eye-beams. And do that right along with all the eye-beams, so that the laborers can go ahead and lay their planks and see that the bricklayers can go ahead with their work.

Q. In the year 1911 and 1912, and up to today, in what
98 manner were these devices that you have just spoken about shipped to the place of installation?

A. Well, they were shipped separately—each drum and the putlogs, and packed on a platform that we had in the shop—there were eight pairs on the machine—that is, sixteen drums, stacked on a little platform, probably two feet square, and we would put them on a truck and run them right onto our track. The putlogs were shipped separately. In fact, they were all shipped in pieces.

Q. And were then assembled at the job—is that right?

A. Yes, we would assemble at the job.

Q. In what parts of the country did you erect scaffolds such as you have just described?

A. Buffalo, Rochester—all the way down from Buffalo—New York City, Buffalo, Rochester, New Haven, Hartford.

Q. How are these machines stored in your place of business since 1912?

The Court: How is that material?

Mr. Goepel: To show the compact nature of the machines.

The Court: Well, that is perfectly plain. And whether they are compact or not d-esn't make any difference.

By Mr. Goepel:

Q. I hand you a series of photographs, and ask you to state whether you know what they are?

Objected to by counsel for defense, as incompetent, irrelevant and immaterial, unless they are shown to have some bearing on this suit.

The Court: He has simply asked if he knows what they are.

99 A. Yes, sir.

By Mr. Goepel:

Q. Please state what they are.

The Court: Don't they speak for themselves?

Mr. Goepel: Then I offer in evidence these five photographs, which I have marked as Plaintiff's Exhibits Nos. 6, 7, 8, 9 and 10 of this date.

Offer objected to by counsel for defense, as incompetent, irrelevant and immaterial, and as not shown to have any bearing whatever on this case.

The Court: What is the relevancy here?

Mr. Goepel: The relevancy is to show the shop practice and the simplicity of the machine about which the witness has testified.

The Court: Is that an element of importance?

Mr. Byrnes: As I understand it, the knock-down element is an important feature of this patent.

The Court: Is there anything in the patent concerning this?

Mr. Byrnes: Whether it is stated in the patent or not, it is an element in the structure, and we are entitled to have anything that is shown in the structure.

The Court: But we cannot lumber up the record with immaterial matters. If they show the use of the device, you can ask him that.

By Mr. Goepel:

Q. Do these pictures show the use of the device that you are now using and erecting?

A. Yes, sir.

109 Counsel for defense renew their objection, on the ground that it is not shown that they are made under the patent in any way.

The Court: I will admit them.

By Mr. Goepel:

Q. Now, since 1911 to date, did you ever have any accident, within your knowledge, caused by the use of the platform type of machine that you have testified about?

Objected to by counsel for defense, as incompetent, irrelevant and immaterial, and having no bearing whatever on this case.

Objection sustained and exception noted to plaintiff.

Q. I show you some devices and ask you to state if you know what they are?

A. Yes, sir.

Q. Please state what they are.

A. They are the scaffolding machines that we are using at the present time.

Q. And those are the kind that you have used since 1911?

A. Those are the kind that we have used since I went to Rochester.

Q. And to what extent have such machines been used?

A. Well, in Buffalo I worked on one job——

Q. Just give a general idea. About how many have you used daily or yearly since 1911?

A. I would judge about 1500 or 2000.

Q. Per year since 1911?

A. Yes, sir.

Q. And continuously used?
A. Yes, sir.

The devices last identified by the witness, being two machines and one putlog, were here marked as Plaintiff's Exhibits Nos. 11, 12 and 13 of this date, and offered in evidence by counsel for plaintiff.

101 Offer objected to by counsel for defense, as not properly identified as having anything to do with this case, so far as the patent in controversy in this case, and therefore as incompetent and irrelvant.

Objection overruled and exception noted to defense.

Q. About what percentage of the trade use machines like the plaintiff's exhibits just offered, two machines and putlogs, or do you know what percentage of the trade use them? (Exhibits 11, 12 and 13.)

A. There are 70 per cent of the trade using them at the present time.

Q. Will you state briefly what advantages attend the use of machines like these exhibits, these two machines and putlogs, when they are rigged up along the building that is being built?

Objected to by counsel for defense, for reason previously stated.

The Court: Is there any advantage that is not apparent?
Mr. Goepel: It might be apparent.
The Court: Then why do you want it?
Mr. Goepel: Because an expert can only testify to that distinct advantage.
The Court: Well, proceed. There are certain advantages. The chief advantage is that it can be raised to the level that the men desire; then there is a more substantial base, perhaps, less vibration. Now, what else is there?

A. Well, there's another advantage. By putting the putlog—putting the frame through the putlogs and then fastening the bolts up to that, in hoisting a scaffold of that kind, one drum up

102 probably six or eight inches higher than the other drum, it will always let the inside drum hang perfectly straight. Now, if that was made tight, it wouldn't do that.

By Mr. Goepel:

Q. In other words, if a man winds one drum at one end of a putlog and no man winds the other drum at the other end of that putlog, what happens then?

Objected to by counsel for defens., as leading.
Objection overruled.

A. On a loose putlog or a tight putlog?
Q. On these machines right here, the loose putlog type?
A. Well, if he winds one end, the one he winds on—if he hoists

up on it, it will set the scaffold on a pitch; it will pitch one way or the other, whichever way he happens to wind.

Q. What happens to the U-shaped frame, with relation to the putlog when one drum is wound more than the other, so as to create a pitch of the putlog?

A. Well, the cable won't wind right on the drum; it will run across the drum where they are rigid.

Q. And what happens to the U-shaped frame with respect to the putlog when the U-shaped frames is loose with respect to the putlog?

A. Well, in hoisting the outside drum, you can hoist that up five or six or whatever inches you want to hoist it up, and it has no effect whatever on the putlog. It will give.

Q. In other words, the putlog will give with respect to the frame?

A. Exactly.

103 Q. And what part of the putlog rests on the frame on these machines?

A. It is the bolts of the putlog, not the putlog.

Q. And if such a U-shaped frame gives with respect to the putlog, as you have just said, what benefit is there attendant upon the use of a winding drum?

A. By using a putlog like that, in such a wide putlog, the plank will open under, and by using the other, the plank will not. The plank opens up and will leave a gap. But with the narrow putlog, like this one here, it just throws a little bit of a gap in there.

Q. What can you say about maintaining the axis of the winding drums if you have a movable connection between the putlog and the U-shaped frame?

A. It will always keep the shaft of the drum there straight across.

Q. Do you mean horizontal?

A. Yes, sir.

Q. And that would make the axis of the winding drum vertical to the cable?

A. Exactly.

Q. And what effect will that have on the winding cable?

A. It will make the cable wind up straight all the time.

Q. And what effect will that have on the life of the cable?

A. It will keep the life a whole lot longer.

By the Court:

Q. If I understand you, when you have a loose construction, you may raise one side of the scaffold and the other will rise also?

A. Oh, no, it won't rise. It lets the platform—the platform will raise on the outside and throw in, that way. But you see, if the putlog was tight, you would have a tendency when you raised the outside drum, to get the weight of the inside drum, too.

104 By Mr. Goepel:

Q. Please describe briefly the advantages attendant upon this type of machine that you have been testifying about, represented by these three exhibits, Exhibits Nos. 11, 12 and 13, the two machines

and putlog, as regards taking down the machine after the workmen have completed their job?

A. I don't quite get that.

Q. Please state how you take these machines down after your men have completed their construction, when they are on the top of the building, with the present type of machine?

A. In some cases, we take them over the top of the roof, and in some cases take them in a window. In cases where we take them through a window, we bat them down six or eight feet on the inside, and then there is a man on the top and he takes the cable and bats them down on the outside the same as the other side.

Q. What can you say with respect to the loads some of these platforms carry?

A. Very heavy.

The Court: That is immaterial. You could make them so they would carry a great load or a light load.

By Mr. Goepel:

Q. What can you say about the type that you use at the present time, which is indicated by the two machines and the putlog here, in respect to supplanting what you spoke about as the overhead Cavanagh type of the overhead Murray type?

The Court: Hasn't he already gone into that? He has said 70 per cent use this.

105 Cross-examination.

By Mr. Lane:

Q. The type of machine that you have been speaking about is the one shown on this circular, Defendant's Exhibit "C," on pages 10, 11 and 13—is it not?

A. Yes, it looks like the machine.

Q. This is the kind that you have been installing during that time, is it?

A. During what time?

Q. Since you have been with the New York Scaffolding Company?

A. Yes, sir, since I have been with the company.

Q. And that was since 1910—what time in 1916?

A. I went with the company in August.

Q. And they were using that device at that time?

A. Not when I first went there.

Q. What company was using it at that time?

A. I don't know.

Q. What is that type of machine there—isn't it called the Murray platform machine?

A. That's what we call it now.

Q. Have you noticed whether this device has been marked under the Murray patent?

A. No, I haven't.

Q. Now, in regard to the using of these devices as you use them—are they set in a position relative to the wall of the building—that is, are they set at right angles to the wall of the building?

A. They are set this way.

Q. They are set as shown in that cut?

A. Yes, sir.

Q. That is, these machines are set as shown on page 13 of Defendant's Exhibit "C"?

A. Yes, they are set that way.

Q. And the putlogs are set on in this way—that is, in line with the axis of the drum?

(Counsel using the exhibit apparatus as an illustration.)

Objected to by counsel for plaintiff.

106 Q. If I understand you correctly, the putlogs are in the same line, the same parallel line, as the axis of the drums in the use of that machine which is used by the New York Scaffolding Company?

A. Yes, sir.

Q. And that has been a custom all your time?

A. Since I have been with them, yes, sir.

Q. So that the device stands as they now stand in the court room, with the drums, each of the drums, having the axis at right angles to the wall of the building, and the putlog connected between them, as shown here?

A. Yes, sir.

Q. And when you come to dismount or take down this construction, and it is up at the top of the building, you pull the structure in and then dissemble it, don't you?

A. Pull the structure in?

Q. I mean pull the putlog and the two hoisting machines into the building, and then take the bolts out?

A. Yes, sir.

Q. And that has been the 70% of devices that you are referring to as having supplanted the others in the trade, isn't it?

A. Yes, sir.

Q. And the photographs which you have shown here showed that construction?

A. Yes, sir.

Q. And the use of that machine as used by the New York Scaffolding Company?

A. Yes, sir.

Q. Now, in the overhead machines to which you have referred, you have a device somewhat similar to these placed on the outriggers at the top of the building, and then have tables running down to the putlogs after the platform is placed?

A. Yes, sir.

Q. And that was the practice in 1904?

A. Yes, sir.

107 Q. So that, instead of having the device and platform as in the present Murray type of machine, the old Murray type

was with the drums at the top and the cables directly connected with the putlogs at the bottom?

A. Yes. And that was the Cavanagh machine.

Q. And that was the Cavanagh machine prior to 1904?

A. Yes, sir.

Q. And that is this Cavanagh machine, as shown in this patent, Plaintiff's Exhibit No. 1?

A. Yes, sir.

Q. The drawings that you have examined of your father's patent correctly show the practice at the time that patent was taken out, as understood by you?

A. Yes, sir.

Q. That was in 1905 and prior?

A. Yes, sir.

Q. And the Murray overhead type to which you refer is shown in this patent No. 882,206, of March 17, 1908?

A. Yes, that is the Murray patent.

Murray patent No. 882,206 offered in evidence by counsel for defense as Defendant's Exhibit "K" of this date.

Q. And this was the type of machine that you referred to as the Murray overhead type of 1908 or prior?

A. Yes, sir.

Redirect examination.

By Mr. Goepel:

Q. You were asked about page 13 of Defendant's Exhibit "C." Is there anything on that particular page 13 that enables you to tell how the structures are beneath the putlogs planks?

A. No. The drums look the same as the drums there.

(Witness refers to physical exhibits.)

108 Q. You were asked about these two machines and the putlog. They can be used just as well by having the U-shaped frame at right angles to the putlog, can't they?

A. They can be used the same, yes.

Q. And in some jobs they are put out separately and the putlog put out separately?

A. I have put them out that way myself.

Q. Do you know of any jobs where the wooden putlog is used instead of this?

A. Yes, I have erected them that way.

Q. And in the case of a wooden putlog, the wooden putlog goes through the U-shaped frame?

A. Yes, sir.

Q. And in such a case the putlog is at right angles to the wall of the building?

A. Yes, sir.

Q. And the U-shaped frames are parallel with the wall of the building?
A. Yes, sir.

EUGENE PITOU, recalled on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Goepel:

Q. I hand you a copy of the Whitney patent No. 998,270, and ask you to compare the pictures therein shown with the structure that you testified about as having seen at Erie, Pennsylvania, at the building of the Liebel-Binney Construction Company?

Objected to by counsel for defense, as incompetent and irrelevant, and having no bearing on this controversy, and as an absolutely unfair way to bring to the attention of the witness matters
109 to which he testified yesterday, and as having been already gone into in his testimony given yesterday.
Objection sustained and exception noted to plaintiff.

Mr. Byrnes: Do I understand that we are prevented from putting in a picture here of what this man saw?
The Court: This man has described everything that he saw. And if he cannot describe it sufficiently from what his recollection is, he can't say that a certain drawing is a drawing that looks like what he saw up in *the* Erie.
Mr. Byrnes: The question is not whether this witness can describe the drawing or not. But suppose this case goes to the upper court, there is not a thing in this case that shows what the witness saw in Erie of the defendant's structure. We are simply using this, not as a patent, but as a drawing of what he saw.
The Court: No, this is a drawing of a patent, and you are trying to get it in in a way that is not approved by the Court.
Mr. Byrnes: This is the man who saw the defendant's device there.
The Court: Yes, and he has testified to that. Now he can't say that this is like a certain patent. He has got to testify to what he saw, and he has so testified. There are ways of getting this information and abiding by the equity rules.

By Mr. Goepel:

Q. Will you please make a sketch of what you saw at
110 Erie, Pennsylvania, about which you testified yesterday?

Objected to by counsel for defense, as incompetent and irrelevant and going into matters which the witness had full opportunity to go into yesterday.

The Court: I will overrule the objection and permit the witness to do so, but it is of comparatively little value, as being made so long after what he saw there, in the light of his testimony.

Witness here makes sketch.

A. This is just a rough sketch. I could make it more in detail.

By Mr. Goepel:

Q. What kind of a view is that that you just made?
A. Isometric.
Q. In what respect is the platforms with relation to the wall of the building?
A. Running on the wall of the building.
Q. In what respect are the putlogs with reference to the wall of the building?
A. At right angles.
Q. In what respect are the putlogs to the frame?

Objected to by counsel for defense, as leading.

A. The putlogs are going through the drum frame.

Counsel for defense offer in evidence the sketch just made by the witness.

Objected to by counsel for defendant, as not having been
111 made at the time, and therefore incompetent, irrelevant and immaterial, for the reason that the witness has testified that he had no positive knowledge that he had seen this construction in use until after the filing of the Bill herein.

Counsel for plaintiff replies to this that the witness has never testified to anything of that sort.

The Court: This is a drawing looking down from the platform?

A. Looking down and along. It is called an isometric.

The drawing is further objected to by counsel for defense, as not having been made from any measurements, and the witness having testified that he could not testify to having seen it until after the filing of the Bill.

Objection sustained.

Exception noted to plaintiff.

The Court: I might suggest to counsel that the oral testimony of the witness was that he saw this platform from the street, and now he gives a drawing as to what he saw from above the street.

Mr. Goepel: You testified yesterday that you saw some structures along a building at Erie, Pennsylvania. What does this drawing represent with respect to that structure?

A. It is not supposed to represent the structure in the sense
112 of the view from which I saw it. I can make a drawing from the street in the position from which I testified that I saw the device just as well. I only tried to make the simplest one.

Q. Can a man standing on the street and looking at a device make a drawing of that view as if he were standing up in the air, in other words, an isometric?

A. Absolutely.

Counsel for plaintiff again offers in evidence the sketch just ma by the witness.

Counsel for defendant renew their objection.

Objection sustained and exception noted to plaintiff.

Counsel for plaintiff offer in evidence Whitney patent No. 998,2

Offer objected to by counsel for defendant, as not properly ce fied.

Objection sustained.

Plaintiff rests.

Defendant rests.

The Court stated that he would hear what the plaintiff has to s on the question of infringement.

Case argued by Mr. Goepel, Mr. Lane and Mr. Byrnes.

Briefs to be filed.

I herewith certify that the foregoing is a true transcript of all t evidence taken in the case of New York Scaffolding Company Liebel-Binney Construction Company, No. 28 October Ter

113 1914, In Equity; together with the offers of counsel, the jections thereto, and the rulings of the Court thereon.

LUCY D. IAMS,
Official Reporter.

October 15, 1915.

I, Charles P. Orr, Judge of the District Court of the United Sta for the Western District of Pennsylvania, hereby certify that t foregoing is a correct transcript of all the evidence, offers of couns the objections thereto and the rulings of the Court thereon in t case of New York Scaffolding Company v. Liebel-Binney Constr tion Company, No. 28, October Term, 1915, In Equity; all of whi so certified, is ordered to be filed and to become a part of the rec this 11th day of October, 1915. CHARLES P. ORR,
Trial Judge.

114 United States District Court, Western District of Pe sylvania.

In Equity.

No. —.

NEW YORK SCAFFOLDING COMPANY, Plaintiff,

vs.

LIEBEL-BINNEY CONSTRUCTION COMPANY, Defendant.

Petition.

Comes now Egbert Whitney doing business under the name a style of The Eclipse Scaffolding Company with a principal office

maha, Nebraska, and a resident of Omaha, Nebraska, and respectully shows to the court as follows:

1. That petitioner is engaged in the business of selling scaffolding achinery at Omaha, Nebraska, and elsewhere throughout the nited States.

2. Petitioner states that the New York Scaffolding Company has led its bill in equity in this court against Liebel-Binney Construcon Company charging it with infringement of Letters Patent of the nited States No. 959,008, granted Elias H. Henderson May 24, 910, for Improvements in Scaffolding-Supporting Means by using ertain scaffolds alleged to contain the invention of said patent praying an injunction restraining the further use by the said 15 Liebel-Binney Construction Company of the scaffold alleged to be an infringement of the patent aforesaid.

3. Petitioner states that the said scaffolds alleged to be an infringeent of the patent aforesaid, were sold by your petitioner to the said iebel-Binney Construction Company and your petitioner says that has a large number of vendees throughout this country who are sing its scaffolds and scaffolding machines similar in construction those used by the said Liebel-Binney Construction Company, the efendant herein, and that the New York Scaffolding Company, hreatens to bring suit against numerous other vendees of your etitioner, thereby greatly injuring its business and unnecessarily arassing its customers and multiplying suits.

4. Your petitioner further shows that in a suit brought by the New ork Scaffolding Company in the United States District Court for he District of Nebraska, at Omaha, against Egbert Whitney, the etitioner herein, infringment was charged because of the manufacure, sale and use of a scaffold machine known as the "Whitney caffold Hoist Machine" which was and is made under U. S. Letters atent to Whitney No. 998,270. The patent charged to be infringed n that suit was the patent to Henderson No. 959,008, here in suit. hat suit was tried on the 17th day of December, 1913, before his onor, Judge Morris, who found that the claims of the Henderson atent were void for want of invention and further that "if they were not entirely void, there would, under the very limited inter- 16 pretation that must be given to them, be no infringement by any scaffolding which might be constructed with the defendnt's device," wherefore, it was ordered, adjudged and decreed that he bill of complaint be dismissed, which was done. Thereafter an ppeal was taken by the New York Scaffolding Company to the ourt of Appeals for the Eighth Circuit. An opinion was filed herein on May 12th, 1915, written by Circuit Judge Sanborn and oncurred in by District Judge Treiber, reversing the decree of the istrict Court. Circuit Judge Smith, however, filed a dissenting pinion as follows: "Believing that the alleged patent of the apellant covers nothing but ordinary, mechanical skill applied to the rior art, I think that the patent is void and this case should be ffirmed. I, therefore, respectfully dissent from the foregoing pinion."

The validity of the said Henderson patent has not, therefore, been

finally determined. The said Foster patent involved in one of the other suits above mentioned has never been adjudicated, so far as petitioner is advised, and petitioner alleges that both patents are, in fact, invalid, and plaintiff and those associated with it, are well aware of the fact of such invalidity but are seeking by means of threats, warnings and suits, to destroy competition and to prevent others from entering upon the manufacture, sale and use of scaffolds and scaffolding machines in competition with them. Plaintiff has published and distributed to the customers of petitioner, circulars containing warnings and threats of suits against all who purchase or use scaffolding devices, and in addition to such warning and threatening
117 circulars, plaintiff has, by its agents and representatives verbally threatened many of the customers and prospective customers of petitioner to bring suit against them if they handled, purchased or used scaffolding devices made by petitioner, and warning them against such purchase and use, which has resulted in great damage and injury to petitioner's business.

Plaintiff, well knowing that the construction of scaffolding devices and machines made by petitioner under its own patents in no way and in no manner whatever infringe upon the patents of plaintiff with intent not to protect and maintain its own rights but under color and pretense of that object to destroy your petitioner's business and to involve it in a multiplicity of vexatious suits and with intent to intimidate petitioner's customers, present and prospective, from purchasing scaffolding devices and machines made under petitioner's patents, continuously for a long time and still has, unfairly, wrongfully and maliciously threatened, intimidated and prevented the customers, present and prospective, of your petitioner, by systematic plans, methods, concerted conduct and action, in manner and form following: viz., stating verbally and by publishing and distributing false, injurious malicious, scandalous, threatening and intimidating circulars or printed letters containing intimidating threats of suit by distributing circulars of like import among the customers and prospective customers of petitioner; by spying upon your petitioner's business, thus ascertaining its customers; by writing letters to petitioner's customers thus ascertained threatening suit against them on plaintiff's patents; by causing the agents and employees of
118 plaintiff to call upon the customers, present and prospective, of petitioner, to make like threats; by pretended legal notices and advertisements in newspapers, booklets, circulars and the like, in and by each and all of which statements, circulars, letters, booklets and advertisements in newspapers and otherwise, said customers, present and prospective, of your petitioner, have been and are unfairly, wrongfully, falsely and maliciously informed, either directly or by innuendo, that all scaffolds being offered in competition with the New York Scaffolding Co.'s devices are infringements of the so-called patents of plaintiff; by such conduct, plaintiff has prevented large numbers of prospective customers of petitioner from purchasing and using its scaffolding devices and machines and has prevented many of petitioner's present customers and users from paying for the scaffolding devices and machines which they

have purchased from petitioner; plaintiff has unfairly and with malicious intent advertised the opinion of the Court of Appeals of the Eighth Circuit in the case hereinbefore mentioned and has misinformed the public and petitioner's customers, present and prospective, as to the real scope of that opinion; has not advised the public that the case is pending at the present time under petition for rehearing; has not advised the public that the District Court dismissed the bill and held the patent of plaintiff invalid; has not advised the public that there was a dissenting opinion by his Honor, Circuit Judge Smith, and did not in its glaring booklets, printed and distributed broadcast, print said dissenting opinion; in addition to the glaring booklets thus distributed by plaintiff misrepresenting said decision plaintiff caused to be erected at the Panama
119 Pacific International exposition at San Francisco, a large sign approximately ten (10) feet high and twenty (20) feet long, printed in large and glaring letters reading as follows:

"Profits, Damages, Injunction and Costs Awarded Us Against Scaffolding Infringer.

Notice to the Building Trade.

The United States Court of Appeals of the Eighth Circuit sustained our contentions. Held the patent to be valid and infringed and awarded us an injunction, with all profits and damages resulting from the infringement complained of together with all costs of the action in our case of the New York Scaffolding Co. vs. Egbert Whitney.

Investigate the safety of the scaffolding machines used by you as regards patent infringement as well as safety in operation."

Plaintiff's acts have been perpetrated throughout the country at large; it has interfered with petitioner's business and customers in Boston, New York, St. Paul, San Francisco, Milwaukee, Indianapolis, Columbus, Ohio, Cleveland, and various and numerous other cities and places throughout the United States; that said statements, advertisements, circulars, publications and acts aforesaid, have
120 not been made in good faith by plaintiff, but under pretense and color of alleged patents and rights, said statements, utterances, publications and acts have been and are continuing to be made with intent to injure and destroy petitioner's property, business and rights, all of which acts and doings of plaintiff have caused great and irreparable damage and injury to your petitioner for which it has not and cannot have an adequate remedy at law.

5. Petitioner further shows, among others, as additional and specific instances of such unfair, wrongful and malicious acts by plaintiff, the following:

(a) Under the name of the Patent Scaffolding Co., plaintiff has issued, published and distributed in large quantities throughout the United States, and especially to the customers of petitioner, present and prospective, large and glaring warning circulars so framed

customers of the petitioner, present and prospective, to the effect that suits will be brought against all customers of petitioner and those dealing with it and that all scaffolding devices and machines made in competition with plaintiff are infringements of its patents and that it will sue all users of any other than its scaffolding devices or machines and from verbally threatening the trade generally and petitioner's customers, present and prospective, and from sending them warning notices and intimidating threats and letters such as herein described and set forth, or any others of like kind or character; petitioner further prays for an order restraining the
125 New York Scaffolding Co. and The Patent Scaffolding Co. and all persons acting for them, either directly or indirectly, from bringing any suits either at law or in equity against purchasers or users of, dealers in or manufacturers of petitioner's scaffolding machines until this suit shall have been finally determined and the questions of validity and infringement of plaintiff's alleged patents particularly the Patent to Henderson No. 959,008 dated May 24th, 1910, and the patent to Foster No. 763,274 dated June 21, 1904, have been finally adjudicated, and petitioner further prays that upon the final hearing of this cause, the matter contained in this petition may be considered for such permanent action as may be found necessary and that an accounting be taken between plaintiff and petitioner to determine and award to petitioner the loss and damage suffered by it in consequence of the unfair, wrongful and malicious acts as set forth by petitioner in this petition; and your petitioner further prays for such other and further relief as the equity of the case shall require.

THE ECLIPSE SCAFFOLDING COMPANY,
By EGBERT WHITNEY.

CHAS. P. HEWES,
GEO. MANKLE,
WALLACE R. LANE,
Counsel for Petitioner.

126 STATE OF NEBRASKA,
County of Douglas, ss:

Egbert Whitney, being first duly sworn, on oath states that he is the petitioner named in the foregoing petition; that he knows the contents thereof of his own knowledge and that the same is true as he verily believes, save such matters as are stated to be alleged on information and belief or as to the statements and doings of other persons and as to those matters, he believes them to be true.

EGBERT WHITNEY.

Subscribed and sworn to before me this 27th day of August, 1915.
[SEAL.] PAUL F. STEINWENDER,
Notary Public.

Filed Sept. 7, 1915.

127 *Exhibit Attached to Petition.*

Norwood W. Howard,

Building Materials.

502-503 Bradbury Bldg., Los Angeles.

A-1492.
Bdwy. 3940.

May 28th, Nineteen Fifteen.

Mr. E. Whitney, c/o Eclipse Scaffolding Co., Block 47, Machinery Hall, P. P. I. E., San Francisco, California.

DEAR SIR: We are putting on a special man to cover Eclipse Scaffolding prospects here, immediately. Kindly send by next mail, or parcel post, about twenty-five sets of illustrated booklets, testimonial letters, or other literature.

Also send several letters or documents, giving full verification, that the New York Patent Scaffolding Company are powerless to sue your company on patent infringement proceedings.

As previously advised, C. J. Kubach Company finally used the New York Patent Scaffolding on the big department store; mainly for the reason that strong representations were made to Kubach that if they used your scaffolding, the New York Patent Scaffolding Company would sue them.

They were "scared off" on account of this and nothing the writer could say would change their minds.

Please advise us when you can ship one sample "Little Wonder," for demonstration and inspection purposes in this office. We
128 have a number of plasterers interested, also several of the contractors, and as soon as some of the big school work gets fairly started, we expect to have plasterers using "Little Wonders" on schools, as well as contractors and plasterers on commercial buildings.

Yours very truly,

N. W. HOWARD.

N. W. H./D. M.

Smith Chicago Street Pavers.
Smith Chicago Mixers.
Smith Concrete Mixers.
Smith Glass Mixer.
Smith Mixerette.
Smith Concrete Elevators.
Hoist Engines.
Sasgen Derricks.
Rock Drills.
Saw Tables.
Gyratory Crushers, Portable.
Gyratory Crushers, Stationary.

Jaw Crushers, Portable.
Gravel Washing Plants.
Elevators and Stone Screens.
Wheelbarrows.
Round, Square and Square Twisted Steel Bars.
Steel Cars and Rails.
Steam Pile Hammers.
Coal Chutes.

Myron S. Seibert & Co.,

Contractor's Equipment,

201 Wyandotte Bldg., Columbus, Ohio.

Mix Your Concrete Smith-Mixer with Brains.

Phones: Automatic 9483; Bell 7781.

Toledo Office: Room 16, Builders' Exchange, Toledo, Ohio.

Ohio Distributors for The T. L. Smith Co., Milwaukee, Wis.

Columbus, Ohio, July 12, 1915.

The Eclipse Scaffolding Co., Box 1177, Lincoln, Neb.

GENTLEMEN: Referring further to your letter of July 3rd written by your Mr. E. Whitney, wish to state that we are camping pretty close on the track of Selden-Breck Company and hope by so doing to land the order for the Little Wonder Scaffolding Hangers.

In this connection we might say, however, that the N. Y. Scaffolding Company is making it mighty unpleasant for us in Columbus. You, of course, realize that you have not received your money from Mr. McGrath for the Hangers. Mr. E. W. McGrath has been out of the city for over a week but the writer got hold of D. W. McGrath to-day and he told me that two weeks ago, after he had talked with him, at the Athletic Club Building, he came over to the office and instructed his son to send you a check for the Hangers but his son spoke up and said, "Father, I have just received a letter from the N. Y. Scaffolding Company advising us not to settle for them as they would hold us responsible." This has held the payment up. Mr. McGrath, fearing trouble, went to his Attorneys and asked them to look into the suits now pending in Court and advise him at once whether he would be protected providing he should pay your account.

I have given Mr. McGrath the patent numbers of both machines to-day. He will see his Attorneys again and will find out just as soon as is possible from his Attorneys what he can do, although I assured him that there would be no trouble in case he settled, using as my argument your letter.

In your letter of the 3rd you stated that you were going to Chicago that week and was going to get out an injunction against N. Y. Scaffolding Company, enjoining them from further interference. As

soon as that is done please advise us as it is hard for us to do business when the eastern concern is working against us.

Yours truly,

MYRON S. SEIBERT & CO.,
Per M. S. SEIBERT.

M. S. S./C. M.

Goepel & Goepel.

Dun Building, 290 Broadway, New York.

June 19th, 1915.

Mr. Daniel W. McGrath, 810 New First National Bank Bldg., Columbus, Ohio.

DEAR SIR: We are informed that you are using or contemplating the use of certain scaffolding devices which have U-shaped frames, and which are intended to be used to make up a scaffolding platform for high buildings. Our information is that such U-shaped frames come from one Whitney, originally of Omaha, Nebraska, and that such U-shaped scaffolding frames are either known as "Whit-
131 ney" machines, or as "Little Wonder" machines.

We are of the opinion that these machines are infringements of U. S. Letters Patent to Henderson, No. 959,008, which has lately been sustained by the Court of Appeals of the Eighth Circuit, in the case of New York Scaffolding Company v. Egbert Whitney of Omaha.

Under these circumstances, we notify you of the rights in the premises, and in the event that you have used such machines, we call upon you to make a satisfactory arrangement for profits and damages sustained, and also to assure us of the discontinuance of the machines complained of.

Under these special circumstances, we feel that we are entitled to an answer from you by return mail, especially in view of the fact that we are under retainer to bring suits against all infringers of the patent.

Very truly yours,

(Sgd.) GOEPEL & GOEPEL.

C. P. G./L.

Received: June 23, 1915. D. W. McGrath. Ans. — File No. —.

132

The Geo. M. Chandler Co.

Machinery Merchants.

No. 9 N. Illinois St.

Phone Main 924.

Warehouse and Storage Yard, West Michigan St. and Belmont Ave.

Phone Belmont 397.

Indianapolis, Ind.

Indianapolis, Ind., July 16, 1915.

Eclipse Scaffold Co., Omaha, Neb.

GENTLEMEN: Last year we had up the matter of scaffolds with you, but the building business was not good, and we had no opportunity to place any of your machines.

This year the building trade is looking up a trifle, and we have brought the Eclipse Scaffold to the attention of several of the leading Building Contractors.

In calling on one of our friends today, in the conversation he stated that within the past two weeks, they had received a letter from a Mr. P. Goepel, Atty., for the New York Scaffold Co., stating that all scaffolds being offered in competition with the New York Scaffold Co.'s devices were infringements and possible users or purchasers were warned against using them.

Will you kindly advise us if there are any late developments in the situation, and what assurance for protection we can give our trade that in the event of their using or purchasing the Eclipse Scaffold.

Awaiting your favors, we are

Yours very truly, THE GEO. M. CHANDLER CO.,
Per C. HENNING.

G. M. C. W.

133

Goepel & Goepel,

Dun Building, 290 Broadway.

New York, July 21, 1915.

Mr. Daniel W. McGrath, 801 New First Natl. Bank Bldg., Columbus, Ohio.

DEAR SIR: We wrote you under date of June 19th, 1915, and did not hear from you. As the matter is important, and may necessitate the filing of a bill in equity, we call upon you to declare yourself, as otherwise we will file suit immediately.

Very truly yours,

(Sgd.) GOEPEL & GOEPEL.

C. P. G./L.

134 *Decree.*

In the United States District Court for the District of Nebraska, Omaha Division.

In Equity.

No. 82.

NEW YORK SCAFFOLDING COMPANY, Complainant,

vs.

EGBERT WHITNEY, Defendant.

This cause came on to be heard on the 17th day of December, 1913, Mr. C. P. Goepel appearing on behalf of the complainant, and Mr. Willard Eddy, appearing on behalf of the defendant.

Counsel for complainant withdrew its case as to the Murray patent in suit and stated that the only claims relied on were claims 1 and 3 in the patent #959,008, issued May 24th, 1910, for Scaffolding Supporting Means, to Elias H. Henderson; and thereupon, after hearing the testimony offered and received and the arguments of counsel, the Court took the case under advisement, and now, having duly considered the same, and being of the opinion that the said claims are void for want of invention, and that, if they were not entirely void, there would, under the very limited interpretation that must be given to them, be no infringement by any scaffolding which might be constructed with the defendant's device:

135 It is ordered, adjudged and decreed that the bill herein be and the same is hereby dismissed with costs, to be taxed.

By the Court,

(Signed) PAGE MORRIS, *Judge.*

Dated February 21st, 1914.

In the District Court of the United States, Western District of Pennsylvania, October Term, 1914.

In Equity.

No. 2[illegible].

NEW YORK SCAFFOLDING COMPANY, Plaintiff,

vs.

LIEBEL-BINNEY CONSTRUCTION COMPANY, Defendant.

Henderson Patent 959,008.

Order.

Upon application of Egbert Whitney, doing business under the name and style of Eclipse Scaffolding Company, for leave to inter-

vene as party defendant herein and for continuance of the date for trial of this cause and for leave to take depositions, and after hearing counsel for the respective parties, it is hereby ordered:

1. That the said Egbert Whitney, doing business under the
136 name and style of Eclipse Scaffolding Company, be and is hereby made party defendant herein, as prayed for in his petition for intervention, and in accordance with the Rules of Practice for the Courts of Equity of the United States, particularly Equity Rule 37.

2. It is further ordered that defendant be given until the 14th day of September in which to file a list of the names and addresses of the witnesses whose testimony they desire to take by depositions.

3. It is further ordered that defendant be and is hereby given until the 25th day of September, 1915, in which to take depositions of the witnesses as specified in accordance with paragraph 2 hereof.

4. It is further ordered that plaintiff be and is hereby given to and including October 2, 1915, in which to take the testimony of witnesses in rebuttal.

The foregoing orders are without prejudice to plaintiff's right to object at the hearing to the admissibility of the depositions taken in accordance herewith.

5. It is further ordered that this cause be and is hereby assigned for trial at Pittsburgh, Pennsylvania, beginning October 11, 1915, at ten o'clock A. M.

Per CURIAM.

Approved as to form:
C. P. GOEPEL,
BAKEWELL & BYRNES,
Counsel for Plaintiff.
CHAS. P. HEWES,
Counsel for Defendant.

Filed Sept. 8, 1915.

137 *Opinion.*

In the District Court of the United States, Western District of Pennsylvania, October Term, 1914.

No. 28.

NEW YORK SCAFFOLDING COMPANY
vs.
LIEBEL-BINNEY CONSTRUCTION COMPANY.

Carl P. Goepel and Clarence P. Byrnes, for Plaintiff.
Wallace R. Lane and George Mankle, for Defendant.

ORR, *J.*:

This is an ordinary patent suit in which United States patent No. 959,008, for "Scaffold-Supporting Means," issued May 24, 1910, to

E. H. Henderson is involved. The defenses are that the patent is invalid for want of invention and that if the patent be valid, yet, defendant has not infringed. The claims of the patent in issue here were in issue in certain other litigation brought by the plaintiff herein against one Whitney in the District Court of the United States for the District of Nebraska. The result in that litigation was that the Court of Appeals of the Eighth Circuit, by a divided Court, reversed the Court below and adjudged the claims 1 and 3 of
138 the patent valid. This present case has been under consideration for some time in the hope that this Court would reach the same conclusion that was reached by the Circuit Court of Appeals of the Eighth Circuit, 224 Fed. 452. The rule of comity does not demand that a Judge of another Court shall "abdicate his individual judgment, but only that deference shall be paid to the judgments of other co-ordinate tribunals." Mast, Foos & Company v. Stover Manufacturing Company, 177 U. S. 485-489.

The necessity of scaffolding in all building operations of magnitude has ever been apparent. Originally, scaffolding was made to rest upon the ground and was increased in height as the building of the structure demanded. The expense of scaffolding necessarily increased with the height of the scaffolds. The natural result was that when the builder could drop his scaffolding from the top of the building with less expense than would be required to raise it from the ground he naturally did so. So with respect to the exterior decoration of a building, when the painter's ladders were not long enough to reach to the height required, the painter devised means by which he could sustain a platform, or as it is often called, a painter's stage or boat, from the roof of the building. The painting of a vessel's hull at sea involves necessarily the dropping of a platform or a plank from some supports made to rest upon or above the deck. The swinging of a boat from the davits would suggest a means by which the painter's stage used in the painting of a vessel could be swung. To those who are accustomed to observe, it is a matter of common knowledge that many men use different
139 means to accomplish the result at which they may all aim, but it is also observed that men in the same art will often times use the same means to accomplish the end sought although there may have been great distance between them and no communication.

Utility is often urged as an important factor in determining patentability but utility must be connected with invention in order to have weight in such determination. Having found that there was no invention in the Henderson device, a consideration of its utility is of slight value, yet the extent to which the plaintiff uses the device of the Henderson patent if it be less in degree than the extent to which other devices controlled by it, intended to accomplish the same purpose, are used some light, though little, may be thrown upon the question of novelty which is also a material element of patentability.

The plaintiff is not a manufacturer of devices but is the holder and owner of patents under which licenses have been granted to

the Patent Scaffolding Company which constructs or causes other to construct the devices alleged to be covered by the patents. The practice of the Patent Scaffolding Company is not to sell the devices but to rent them to contractors who may require the use of scaffolding in the erection of tall buildings. By judicious advertising and by permitting contractors to have the devices for the necessary period, at less than what it would cost to construct them, the Patent Scaffolding Company has created a large business and the plaintiff receives substantial returns under the licenses granted by it.

The facts as revealed by the testimony negative the sug-
140 gestion that there is anything novel in the device of the patent in suit. The demand created for the device is not the result of its novelty combined with utility, but of the business methods of the Patent Scaffolding Company.

We find from the specifications of the patent what Henderson desired to attain as expressed in the following language:

"My invention relates to an improved means for supporting scaffolds used in connection with the construction of buildings and their repair. Scaffolds for this purpose are preferably of the swinging type supported by cables from outriggers temporarily secured to the upper part of the building.

"It has been the practice in the past to associate hoisting means with the cables at the outriggers and in some cases it has been proposed to use such hoisting means in connection with the cables of the scaffold to adjust the height as required in connection with the work.

"My invention relates to an improved form of hoisting mechanism carried by the scaffold for securing the same to the cables, the upper ends of which are connected to outriggers, generally temporary in character, secured to the upper portion of the building."

It is to be noticed in that language that Henderson recognizes the prior use of scaffolds of the swinging type, supported by cables from outriggers, and that he recognized the use of the hoisting means in connection with the cables on the scaffold to adjust the height as required in connection with the work. Henderson did not
141 have to say what everyone knew, that as part of a scaffold floor, pieces were used extending between and resting upon cross beams called putlogs.

In considering the claims in suit, we find that in addition to the various elements, Henderson claimed a combination with U-shaped bars in which the cross beams or putlogs are laid, upon which the floor pieces are sustained. The claims are as follows:

Claim 1. "A scaffold consisting in the combination of cross beams, floor pieces extending between such beams, and a hoisting device associated with each end of each beam, each hoisting device consisting of a continuous U-shaped metal bar extending around the under side of and upward from the associated beam, and a hoisting drum rotatably supported by the side members of such bar."

Claim 3. "A scaffold consisting of a plurality of U-shaped bars arranged in pairs, a cross beam laid in and extending between each pair of such U-shaped bars, a floor laid upon said cross beam,

drum rotatably supported between the upwardly extending side members for each of said U-shaped bars, and means for controlling the rotation of said drum."

The support of the hoisting device by the side members of the metal bar is found in U. S. patent to Murray, 854,959, dated May 28, 1907. In the U. S. patent to Bowyer and Casperson, No. 382,252, under date of May 1, 1888, is found a painter's stage in which there is a continuous metal bar extending around the under side of and upwardly holding one end of the plank upon which the
142 painter rests. A similar one must be at the other end. The plank rests upon the lower part of that bar just as the cross beam rests upon the lower part of the U-shaped bar called for in the patent in suit. The plank, of course, is not large enough to afford support for bricks or mortar, but if that plank support as called for in the Bowyer and Casperson patent be placed at right angles to the building and used as a putlog and a similar plank resting in the same way be used as another putlog, upon which floor pieces can be placed, the arrangement would be the same as contemplated by Henderson in the patent in suit, so far as the resting of the beam upon the metal which forms the base of the U-shaped bar. The erection of outriggers for the support of the Bowyer and Casperson devices, arranged as suggested, would accomplish the same result as the device of Henderson and just as satisfactorily.

This Court is not unmindful of the difficulty of ascertaining what is and what is not invention. In every case of a rearrangement of old parts it is urged that because such rearrangement seems simple and natural, that the Court must avoid falling into the error of holding that there is no invention. It is insisted that the device under consideration would be found in prior patents and publications if it were so simple to the men who claimed invention as appears after the patent has been granted. The argument is good where the patented device has filled a long felt want and has immediately leaped into favor upon its own merits, but it is not sound where the device is one which has become widely used by reason of extensive advertising and reasonable charge for its use. It is a matter
143 of observation that of recent years patents have been multiplied beyond precedent and not in proportion to the increased population. Many of them which have each very slight variations from the other are found in the same art. In many suits brought upon such patents it has developed that the method of the patent has been a shop practice for years or that the device of the patent has been used by artisans to accomplish the result which the patentees hoped to secure especially for himself.

It was the intention of the framers of the Constitution that inventors could only be protected. It is well said by Judge Strong in Pearce v. Mulford, 102 U. S. 112-118 "But all improvement is not invention, and entitled to protection as such. Thus to entitle it, it must be the product of some exercise of the inventive faculties, and it must involve something more than what is obvious to persons skilled in the art to which it relates."

It seems clear that to a person skilled in the art of making or ad-

justing scaffolding, if he had a Bowyer and Casperson patent and the Murray patent before him, the arrangement of Henderson would be obvious if he desired to use it.

In the neighborhood of 70 per cent. of the scaffolding devices put out by the Patent Scaffolding Company are used and are intended to be used in accordance with the disclosure of the Murray patent No. 854,959. The Patent Scaffolding Company in its catalogue in Illustrations illustrated the Murray arrangement and not the Henderson. According to the claims of the Henderson patent in suit the frames of the machines are intended to be parallel with the wall of the building upon which they are to be used. The plane of the frames of the Murray machines *are* intended to be in the plane of the
144 putlog which, of course, must be approximately at right angles to the building in order that the flooring of the scaffolding resting thereon may be extended along the side walls of the building. The putlogs indicated in the Murray patent consists of two pieces of angle iron bolted together in connection with the frames in which the hoisting devices are supported. This arrangement of the Murray patent makes the portions of the angle iron where they are connected with such frame, equivalent to the bottom part of the U-shaped frame of the Henderson patent. In connection with the frames described in the Henderson patent in suit, in more than two-thirds of the machines used, the putlogs are the angle irons of the Murray patent and the bolts connecting the two angle irons with each frame rest upon the lower part of the "U" of the Henderson frame, that is to say, the Henderson frame at this lower part, extends between the two pieces of angle iron below the bolts connecting the same. It therefore appears that in the vast majority of the frames used the putlogs do not extend through the frames as called for in the patent in suit nor could they do so because, as we have said, the vertical plane of the frame is in the vertical plane of the putlogs. This conclusion is strengthened by the fact that while the plaintiff put in evidence a large number of photographs showing the frame of the Henderson device, it did not put in evidence any photographs showing the use of the Henderson device and the putlog in the same relation as contemplated by the Henderson patent. The Henderson patent has not supplanted others, nor has the influence of its owner been exerted to that end. It barely represents a step in the art. It does not disclose invention.

145 In view of the conclusion reached by this Court that claims 1 and 3 of the patent in suit are invalid, it is unnecessary to do more than touch upon the matter of infringement. The evidence of infringement is meagre and yet if the claims of patent in suit were to be held valid with a range of equivalents, infringement would be found

The defendant uses a device known as the Whitney Scaffolding device which was the subject of the litigation in the case in the Eighth Circuit above referred to, 204 Fed. 452. If the patent in suit were held to be valid to the exact form as described in the specifications, infringement would not be found, because the Whitney device does not appear to be an imitation of the Henderson device.

While similar, they are not so like each other that builders would be deceived and take one for the other.

Another matter should be referred to; at the trial in this case, Whitney, who was the defendant in the suit in the Eighth Circuit was permitted to intervene in the suit in this Court, without objection by either party. After the trial, the plaintiff moved for permission to file a supplemental bill in which the only new matter alleged was the intervention of Whitney in the present case and the final determination of the case in the Eighth Circuit against Whitney's contention. It was not pretended that such decision would operate as res adjudicata, because the liability of the defendant in this suit could not be the liability of Whitney. As the case stood at the time of the motion, the plaintiff in this case and the plaintiff in the litigation in the Eighth Circuit were one and the same person,
but the defendant in this case was different from the defend-
146 ant in the case in the Eighth Circuit. While the decision in the Court of Appeals in the Eighth Circuit might have been conclusive upon Whitney with respect to the validity of the patent in suit, yet it would not be conclusive upon the Liebel-Binney Construction Company, for the reason that the latter did not have its day in Court.

The Court is of the opinion that the plaintiff is not entitled to file its supplemental bill and has refused the motion.

The bill in this case must be dismissed at the cost of the plaintiff. Let a decree be drawn.

Filed Apr. 28, 1916.

147 United States District Court, Western District of Pennsylvania.

NEW YORK SCAFFOLDING COMPANY, Plaintiff,

against

LIEBEL-BINNEY CONSTRUCTION COMPANY and EGBERT WHITNEY, Defendants.

Petition.

The petitioner, the New York Scaffolding Company, the above named plaintiff, respectfully alleges as follows:

That on or about September 16, 1914, your petitioner filed his bill in this honorable court against Liebel-Binney Construction Company, this defendant, for the purpose of preventing the defendant from using certain scaffold hoist machines which infringe upon plaintiff's U. S. Patent No. 959,008.

That on October 3rd, 1914, the said defendant filed its answer.

That on September 7th, 1915, one Egbert Whitney, Omaha, Nebraska, petitioned to be permitted to intervene in this action as a party defendant, and the said petition was granted by the court and upon an order duly made and entered the said Egbert Whitney was permitted to intervene as a party defendant.

That on the eleventh and twelfth days of October, 1915, final hearing was had in this action, both the plaintiff and the
148 defendant being represented by counsel, and after due argument this matter was taken under advisement by His Honor, Judge Orr, who conducted the trial herein.

That His Honor, Judge Orr, has as yet rendered no decision herein.

That on or about the 10th day of October, 1912, a bill of complaint was filed in the United States District Court for the District of Nebraska by the complainant herein, New York Scaffolding Company, as plaintiff, against the said Egbert Whitney, as defendant.

That this action in the District Court of Nebraska was brought to restrain the said Egbert Whitney from infringing on plaintiff's patent No. 959,008, and that the said Egbert Whitney sold the machines to the Liebel-Binney Construction Company, which are claimed to infringe the said Henderson Patent, namely, U. S. Patent No. 959,008.

That a trial was had in open court, said trial being had before His Honor, Judge Morris.

That thereupon, on or about February 21st, 1914, His Honor, Judge Morris, signed a decree which dismissed the bill of complaint in the aforesaid action in the District of Nebraska.

That thereafter appeal was duly taken by the New York Scaffolding Company and the said appeal being duly presented unto the Honorable Circuit Court of Appeals of the Eighth Circuit on May 12th, 1915, the decree of the said United States District Court for the District of Nebraska was reversed, and the aforesaid machines sold by Egbert Whitney to the Liebel-Binney Construction Company, when combined, according to claims one and three of
149 Henderson Patent No. 959,008, were adjudicated to infringe said claims of said Henderson Patent No. 959,008.

That thereafter a petition for rehearing was filed by defendant on or about June 10th, 1914, which was denied on or about August 26th, 1914.

Thereupon said Egbert Whitney petitioned for a writ of certiorari, which petition was denied by the Honorable Supreme Court of the United States on or about October 19th, 1914.

On or about October 25th, 1914, a mandate issued from the said Honorable Court of Appeals of the Eighth Circuit, in accordance with its decision aforesaid, and on November 15th, 1915, a decree after mandate was signed by His Honor, Judge Munger.

It was, therefore, only after the aforesaid final hearing of this action that the mandate aforesaid was issued, that the said decree after mandate was signed.

Your petitioner, therefore, prays that it be permitted to file a supplemental bill, as annexed, and for such other and further relief as may be deemed proper.

Your petitioner respectfully presents unto the court a certified

copy of the aforesaid decree after mandate of the United States District Court for the District of Nebraska.

NEW YORK SCAFFOLDING COMPANY,
By C. P. GOEPEL, *Attorney.*

Filed Feb. 4, 1916.

150 *Supplemental Bill of Complaint.*

United States District Court, Western District of Pennsylvania.

NEW YORK SCAFFOLDING COMPANY, Plaintiff,

against

LIEBEL-BINNEY CONSTRUCTION COMPANY and EGBERT WHITNEY, Defendants.

The plaintiff, New York Scaffolding Company, respectfully sets forth and alleges as follows:

That on or about the 11th day of November, 1912, a bill of complaint herein was filed and that on or about December 30th, 1912, the answer herein was filed.

That thereafter and on or about the 7th day of September, 1914, the above-named Egbert Whitney petitioned for leave to intervene as a party defendant herein, and the said petition was duly granted.

That thereafter, final hearing was had herein before His Honor, Judge Orr, who, as yet, has not rendered a decision herein.

That on or about the 10th day of October, 1912, the plaintiff, New York Scaffolding Company, filed a bill in equity, as complainant, against the aforesaid Egbert Whitney, as defendant, in the United States District Court for the District of Nebraska, to prevent the said Egbert Whitney from selling and disposing of scaffold hoist machines, which, when combined, according to claims
151 one and three of Henderson Patent No 959,008, here in issue, infringed upon the aforesaid claims one and three.

That on information and belief the said Egbert Whitney sold unto the defendant herein the machines, whose use by the said Liebel-Binney Construction Company is the infringement complained of in this action, and in the original bill of complaint herein.

That in the aforesaid action against the said Egbert Whitney, final hearing was duly had before His Honor, Judge Morris, who, on or about February 21st, 1914, signed a decree dismissing the bill of complaint.

That an appeal was duly taken unto the Honorable Circuit Court of Appeals of the Eighth Circuit, which, upon due hearing had on or about May 12th, 1915, reversed the decree of the said United States District Court for the District of Nebraska.

That on or about August 26th, 1915, the said Honorable Circuit Court of Appeals of the Eighth Circuit, denied a petition for rehearing filed by the said Egbert Whitney.

That on or about October 25th, 1915, a mandate was issued by the said Honorable Circuit Court of Appeals of the Eighth Circuit, in accordance with its aforesaid decision of May 12th, 1914, and that on or about the 15th day of November, 1915, a decree after mandate was signed and entered in the said United States District Court for the District of Nebraska, as appears from the said certified copy of this decree hereunto annexed.

That in the said suit against the said Egbert Whitney,
152 claims one and three of the said Henderson Patent, namely, U. S. Patent No. 959,008, were adjudicated.

Wherefore, plaintiff respectfully sets forth that the said Egbert Whitney is estopped from denying the validity of claims one and three of U. S. Patent No. 959,008, here in issue, or the infringement thereof by the Liebel-Binney Construction Company, and it respectfully prays that the said Egbert Whitney, his agents, servants and employees be perpetually enjoined from infringing upon claims one and three of Henderson Patent No. 959,008 and that he be required to account for the profits, gains, benefits and advantages which may have arisen from or accrued unto him for the aforesaid infringement, and for the damages which have been suffered by the plaintiff herein, and that he pay over unto the said plaintiff the aforesaid gains, profits, benefits, advantages and damages and for such other and further relief as may be deemed proper.

NEW YORK SCAFFOLDING COMPANY,
By WM. E. CORNE, *President.*
C. P. GOEPEL,
Solicitor for Plaintiff.
BAKEWELL & BYRNES,
Local Solicitors for Plaintiff.

STATE OF NEW YORK,
County of New York, ss:

William E. Corne, being duly sworn, deposes and says that he is the president of the New York Scaffolding Company; that he has read the foregoing supplemental bill of complaint and knows the contents thereof; that the same is true of his own knowledge,
153 except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, he believes it to be true.

WM. E. CORNE.

Sworn to before me this —— day of January, 1916.

——

STATE OF NEW YORK,
County of New York, ss:

Carl P. Goepel, being duly sworn, deposes and says that he is the solicitor and counsel for the plaintiff herein, and was also solicitor

nd counsel for the plaintiff herein in the suit against Egbert Whitey, set forth in the annexed petition.

That this petition for leave to file a supplemental bill is being rought in good faith, and, as deponent verily believes, upon valid rounds, and that the facts set forth in said petition are true and orrect to the best of deponent's knowledge, information and belief.

CARL P. GOEPEL.

Sworn to before me this —— day of January, 1916.

——, ——.

Filed Feb. 4, 1916.

54 United States District Court, Western District of Pennsylvania.

In Equity.

No. 28.

New York Scaffolding Company, Plaintiff,

vs.

iebel-Binney Construction Company and Egbert Whitney, Doing Business under the Firm Name and Style of The Eclipse Scaffolding Company.

Decree.

This cause came on to be heard on the 11th day of October, 1915, nd after hearing the testimony offered and received, and the arguments of counsel for the respective parties, the court took the case nder advisement, and now, having duly considered the same, it is Ordered, Adjudged and Decreed that the bill of complaint be and he same is hereby dismissed for want of equity at the costs of the laintiff.

Done at Pittsburgh, Pa. this 27th day of May, 1916.

Per CURIAM.

Approved as to form.

——, ——,

Solicitors and of Counsel for Plaintiffs.

——, ——,

Solicitors and of Counsel for Defendant.

Filed May 27, 1916.

155 United States District Court, Western District of Pennsylvania.

In Equity.

No. 28.

NEW YORK SCAFFOLDING COMPANY, Plaintiff,
vs.
LIEBEL-BINNEY CONSTRUCTION COMPANY, Defendant.

Præcipe for Transcript.

To the Honorable Clerk of the United States District Court for the Western District of Pennsylvania, in the Third Circuit.

SIR: Comes now the plaintiff by its counsel, and requests that the appeal record be made up and that the transcript contain one copy of each of the following to wit:

1. Docket entries.
2. Bill of complaint.
3. Henderson patent, No. 959,008.
4. Answer of the Liebel-Binney Construction Company.
5. Petition of the Liebel-Binney Construction Company praying for leave to file an amended answer and order permitting the filing of an amended answer.
6. Amended answer of the Liebel-Binney Construction Company.
7. Petition of Egbert Whitney for leave to intervene and order permitting his intervention herein.

156 8. All the testimony and exhibits, except such as shall be sent up as physical exhibits in this case, namely, the hoisting mechanism and putlog, put in evidence by the plaintiff, Nos. 11, 12 and 13.

9. Petition of plaintiff for leave to file a supplemental bill of complaint and proposed supplemental bill of complaint.
10. Opinion of Hon. District Court.
11. Final decree, dated May 27, 1916.
12. Assignment of errors.
13. Copy of this præcipe.
14. Order as to exhibits.
15. Stipulation of counsel as to record on appeal and order of court approving same.
16. Order of the court approving the record.

BAKEWELL & BYRNES,
Solicitors for Plaintiff-Appellant.

Service of this præcipe acknowledged this 31st day of October, 1916.

CHARLES E. HEWES,
Solicitor for Defendant-Appellee.

Filed Nov. 1, 1916.
8—712

157 United States District Court, Western District of Pennsylvania.

In Equity.

No. 28.

NEW YORK SCAFFOLDING COMPANY, Plaintiff,

vs.

LIEBEL-BINNEY CONSTRUCTION COMPANY, Defendant.

Defendant's Praecipe for Transcript.

To the Clerk of the United States District Court, Pittsburgh, Pa.:

Comes now the defendant, by its counsel, and requests that the following be added to the transcript of record (being in addition to the praecipe for record filed by plaintiff) and that the transcript contain one copy each of the following, to-wit:

1. Exhibits attached to the petition of Egbert Whitney for leave to intervene, etc.

2. Affidavits of John M. Witherspoon dated August 30, 1915; Dan W. Kimball dated September 2, 1915, with letter attached; William E. Corne dated September 3, 1915 (consisting of one page); affidavit of Carl P. Goepel dated September, 1915.

3. Notice by plaintiff of its reliance upon claims 1 and 3 of the Henderson patent, and as to machine charged to infringe.

158 4. Order entered September 8, 1915, as to taking of depositions, etc.

5. Stipulation transferring case to Pittsburgh for trial.

6. Copy of this praecipe.

WALLACE R. LANE,
GEORGE MANKLE,
Solicitors and of Counsel for Defendant-Appellee.

Service of this praecipe accepted and receipt of a copy thereof acknowledged, this — day of November, 1916.

____ ____,
Counsel for Plaintiff-Appellant.

159 United States District Court, Western District of Pennsylvania.

In Equity.

No. 28.

NEW YORK SCAFFOLDING COMPANY, Plaintiff,

vs.

LIEBEL-BINNEY CONSTRUCTION COMPANY, Defendant.

Assignment of Errors.

And now comes the plaintiff, by its solicitors, and having prayed an appeal to the Hon. United States Circuit Court of Appeals, for the Third Circuit, from the final decree of the Honorable United States District Court for the Western District of Pennsylvania, entered on or about the 27th day of May, 1916, respectively, represents as assignment of errors herein, that the said Honorable District Court erred in the following particulars, to wit:

1. In holding Claims 1 and 3 of U. S. Letters Patent, No. 959,008 to Henderson here in issue, void and invalid.

2. In holding that the defendant did not infringe upon the said claims 1 and 3 of the said Henderson Patent, No. 959,008, here in issue.

3. In denying the petition of the plaintiff herein, for leave to file a supplemental bill setting forth the mandate, and the decree
160 after mandate, in the case of New York Scaffolding Co. v. Egbert Whitney, brought in the United States District Court for the District of Nebraska, Omaha Division.

4. The Court erred in holding the Henderson patent 959,008 to be anticipated in the prior art, and to be lacking in invention, as to the claims sued upon.

5. In dismissing the bill of complaint.

Wherefore, the said plaintiff respectfully prays that the said final decree may be reversed in the particulars hereinabove set forth.

C. P. GOEPEL,
Solicitor for Plaintiff-Appellant.

BAKEWELL & BYRNES,
Solicitors for Plaintiff-Appellant.

Filed Oct. 30, 1916.

161 United States District Court, Western District of Pennsylvania.

In Equity.

No. 28.

NEW YORK SCAFFOLDING COMPANY, Plaintiff,

vs.

LIEBEL-BINNEY CONSTRUCTION COMPANY, Defendant.

Order.

And now, this 4th day of December, 1916, defendant's præcipe for transcript having been duly considered, it is hereby ordered that items 1, 2 and 4 thereof be disapproved.

Per CURIAM.

Filed Dec. 4, 1916.

162 In the United States District Court, Western District of Pennsylvania.

In Equity.

No. 2[illegible].

NEW YORK SCAFFOLDING COMPANY, Plaintiff,

vs.

LIEBEL-BINNEY CONSTRUCTION COMPANY, Defendant.

Stipulation.

It is hereby stipulated by and between plaintiff and defendant by their counsel, that trial at Erie, Pennsylvania, be waived, and that trial be had at Pittsburgh, Pennsylvania, on the day fixed by the Court, namely Oct. 11, 1915, at ten o'clock A. M.

C. P. GOEPEL,
BAKEWELL & BYRNES,
Counsel for Plaintiff.
CHAS. P. HEWES,
Counsel for Defendant

Filed Sept. 8, 1915.

163 In the District Court of the United States for the Western District of Pennsylvania, October Term, 1914.

In Equity.

No. 28.

NEW YORK SCAFFOLDING COMPANY, Plaintiff,

vs.

LIEBEL-BINNEY CONSTRUCTION COMPANY, Defendant.

Henderson Patent, 959,008.

Notice.

Plaintiff notifies the defendant that it will rely upon claims 1 and 3 of the Henderson patent No. 959,008, at the trial of this cause.

Plaintiff further notifies defendant that the defendant's machine which it will rely upon as an infringement is a structure identical with the structure in litigation between the New York Scaffolding Company and Egbert Whitney in a suit originally filed in the District of Nebraska and decided by the Court of Appeals for the Eighth Circuit, a specimen of which machine was produced in court to-day, September 7, 1915, and identified as "Exhibit A," and which machine is known to the trade as the "Whitney Scaffold-Hoist Machine."

BAKEWELL & BYRNES,
Counsel for Plaintiff.

Pittsburgh, Penna., September 7, 1915.

Filed Sept. 8, 1915.

164-5 *Certificate.*

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

I, J. Wood Clark, Clerk of the District Court of the United States, for the Western District of Pennsylvania, do hereby certify that the annexed and foregoing pages contain a true and correct copy of the record on appeal in the above entitled case, so full and entire as the same remains of record and on file in my office, in the City of Pittsburgh, in said District.

In testimony whereof, I have hereunto signed my name and affixed the seal of the said Court, at Pittsburgh, this — day of Dec., A. D., 1916.

[SEAL.] J. WOOD CLARK, *Clerk.*

(Here follow diagrams and specification marked pp. 166 to 170, incl.)

712.

New York Scaffolding Co. } D 166
Liebel Bienny Iron Co.

166

E. h. HENDERSON.

SCAFFOLD SUPPORTING MEANS.

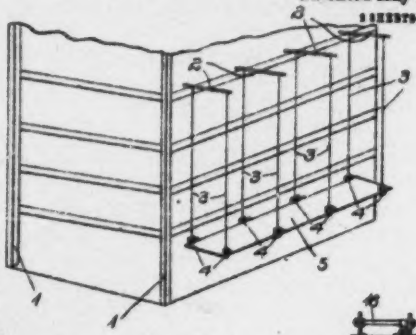
APPLICATION FILED JUNE 19, 1909.

959,008.

Patented May 24, 1910.

SHEETS—SHEET 1.

Fig. 1



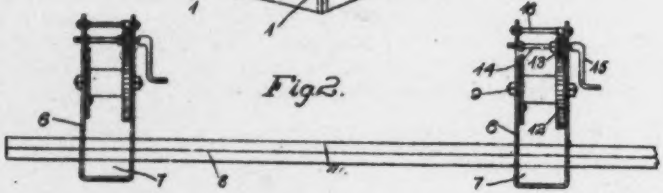


Fig. 2.

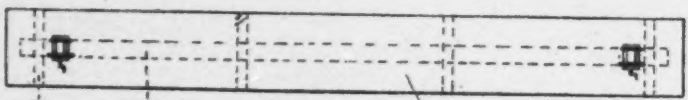


Fig. 3.

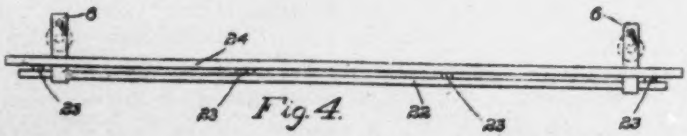


Fig. 4.

Witnesses

George C. Higham.
Albert G. McCabe

Inventor
Elias H. Henderson
By Brown & Williams
Attorneys

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E. H. HENDERSON.

SCAFFOLD SUPPORTING MEANS.

APPLICATION FILED JUNE 10, 1909.

959,008.

Patented May 24, 1910

3 SHEETS—SHEET 1.

712.
Newyork Scaffolding Co
Lisbet Benny Iron Co. } 168

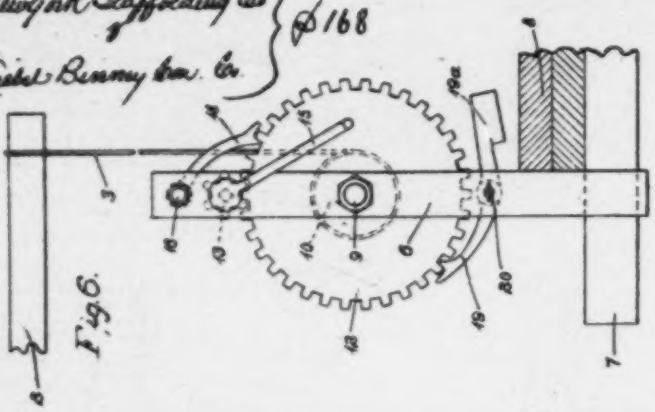


Fig. 6.

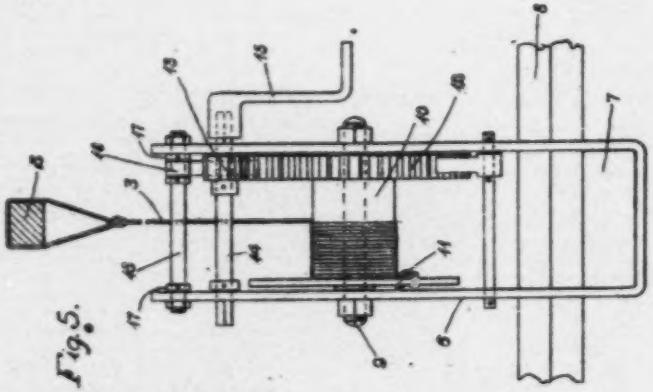


Fig. 5.

Witnesses
George C. Higham.
Albert G. McCabe.

Inventor
Elias H. Henderson
By Brown & Williams
Attorneys

UNITED STATES PATENT OFFICE.

ELIAS H. HENDERSON, OF CHICAGO, ILLINOIS.

SCAFFOLD-SUPPORTING MEANS.

959,008. Specification of Letters Patent. Patented May 24, 1910.

Application filed June 19, 1909. Serial No. 503,053.

To all whom it may concern:

Be it known that I, ELIAS H. HENDERSON, a citizen of the United States, residing at Chicago, in the county of Cook and State of Illinois, have invented certain new and Improved Scaffold-Supporting Means, of which the following is a full, clear, concise, and exact description, reference being had to the accompanying drawings, forming a part of this specification.

My invention relates to an improved means for supporting scaffolds used in connection with the construction of buildings and their repair. Scaffolds for this purpose are preferably of the swinging type supported by cables from outriggers temporarily secured to the upper part of the building.

It has been the practice in the past to associate hoisting means with the cables at the outriggers, and in some cases it has been proposed to use such hoisting means in connection with the cables on the scaffold to adjust the height as required in connection with the work.

My invention relates to an improved form of hoisting mechanism carried by the scaffold for securing the same to the cables, the upper ends of which are connected to outriggers, generally temporary in character, secured to the upper portion of the building.

It is an object of my invention to construct such a hoisting mechanism in such a manner that it results in a maximum degree of security and a minimum cost of production.

The several drawings illustrating my invention are as follows:

Figure 1 is a perspective view of the framework of a building showing my scaffold supporting means in place upon a scaffold. Fig. 2 is an enlarged side view of a portion of the scaffold shown in Fig. 1. Fig. 3 is a top view of a modified form of scaffold narrower than the scaffold shown in Fig. 1. Fig. 4 is a side view of the scaffold shown in Fig. 3. Fig. 5 is a side view of the hoisting mechanism used in connection with each supporting cable. Fig. 6 is a face view of the mechanism shown in Fig. 5.

Similar numerals refer to similar parts throughout the several views.

As shown in Fig. 1, the framework 1 of the building supports at its upper portion a plurality of outriggers 2, from the overhanging portions of which cables 3 depend. Each of these cables 3 is connected at its lower end to a hoisting mechanism 4, which together serve to support the scaffold 5.

As indicated in Fig. 2, the frame 6 of each hoisting mechanism is so formed as to pass around the end of a cross piece 7 used to support the platform 8 of the scaffold 5.

The detail construction of each hoisting mechanism is more clearly shown by reference to Figs. 5 and 6. Each of such mechanisms consists of a frame 6, preferably of bar iron, bent into the shape of a U, and when so formed adapted to pass around and support one end of one of the cross pieces 7 referred to above. The upwardly extending ends of the frame 6 have extending between them a round bar 9 which forms the support for a drum 10 used to receive the cable 3, the end of which is secured to the drum by means of a cable clamp 11. The drum 10 carries at its right-hand end, as shown in Fig. 5, a gear 12 which meshes with a pinion 13 secured to the shaft 14, which is revolubly supported in the upwardly extending ends of the frame 6. The shaft 14 is squared at its ends to be engaged by cranks 15 at either or both of such ends, as desired, for the purpose of rotating the shaft 14 and the drum 10. The upper ends of the frame 6 are held in proper relative position by means of a bolt 16, upon which are secured collars 17 to properly space the ends of the frame 6. The bolt 16 rotatably supports a locking pawl 18 adapted to engage the gear 12 carried by the drum 10 for the purpose of holding such drum positively in any position to which it may be moved by the operation of the crank 15. A second pawl 19 is indicated as supported by a rod 20 extending between the side members of the frame 6, which pawl, as indicated at 19ª, is adapted to be engaged by the foot of the person operating the drum to remove such pawl from engagement with the gear 12 carried by the drum.

The hoisting mechanism just described is also adapted for use in connection with comparatively small scaffolds which are much narrower than the style of scaffold shown in Fig. 1. In this connection, one hoisting mechanism may be used at each end of the scaffold 21, as shown in Figs. 3 and 4. In connection with scaffolds of this type, it is generally desirable to locate a

supporting timber 22 longitudinally of the scaffold 21 on its under side and substantially under the middle of the scaffold. This timber has placed upon it cross pieces 23, upon which the floor 24 of the scaffold is laid. The frames 6 of the hoisting mechanisms in this modification are built to pass around the ends of the timber 22 to support the scaffold.

From the above it will be seen that my construction secures the greatest possible amount of security, since the frame 6 passes around the supporting beams of the scaffold in such a way that no auxiliary means are required to secure the hoisting mechanism to the scaffold. Furthermore, the construction is made very simple, and the machines can be cheaply made on account of the small number of parts, and further on account of the single bar constituting the framework of the machine serving also as the bearings and bearing supports for the hoisting mechanism.

While I have shown my invention in the particular embodiment herein described, I do not, however, limit myself to this construction, but desire to claim any equivalent that will suggest itself to those skilled in the art.

I claim:

1. A scaffold consisting in the combination of cross beams, floor pieces extending between such beams, and a hoisting device associated with each end of each beam, each hoisting device consisting of a continuous U-shaped metal bar extending around the under side of and upward from the associated beam, and a hoisting drum rotatably supported by the side members of such bar.

2. A scaffold consisting in the combination of cross beams, floor pieces extending between such beams, and a hoisting device associated with each end of each beam, each hoisting device consisting of a metal bar formed around and extending upward on both sides of the associated beam, a drum supported by the upwardly extending ends of the bar in bearings formed in such bar, such drum adapted to receive a cable for supporting the scaffold, a crank shaft also supported in bearings formed in such bar, and gearing between the drum and the crank shaft.

3. A scaffold consisting of a plurality of U-shaped bars arranged in pairs, a cross beam laid in and extending between each pair of such U-shaped bars, a floor laid upon said cross beam, a drum rotatably supported between the upwardly extending side members of each of said U-shaped bars, and means for controlling the rotation of said drum.

In witness whereof, I hereunto subscribe my name this 10th day of June, 1909.

ELIAS H. HENDERSON.

Witnesses:

ALBERT C. BELL,
ROBERT F. BAGGER.

171 PLAINTIFF'S EXHIBIT No. 2.

10/11/15, L. D. S.

2-392.

Department of the Interior,

United States Patent Office.

Received and recorded on the 7th day of March, 1911, in Liber A, 86, page 499 of Transfers of Patents.

In testimony whereof, I have caused the seal of the Patent Office to be hereunto affixed.

[SEAL.]

E. B. MOORE,
Commissioner of Patents.

Assignment.

Whereas, I, Elias H. Henderson, of Chicago, in the County of Cook, and State of Illinois, did obtain letters patent of the United States for an improvement in Scaffold Supporting Means, which letters patent are numbered 959,008 and bear date the 24th day of May, in the year 1910.

And whereas, he is now the sole owner of said patent, and of all rights under the same; and whereas, the Henderson Scaffold Hoist Company, of Chicago, County of Cook, State of Illinois, are desirous of acquiring the entire interest in the same;

Now therefore, to all whom it may concern: Be it known that, for and in consideration of the sum of Two Thousand Dollars, to him in hand paid, the receipt of which is hereby acknowledged, I, the said Elias H. Henderson, have sold, assigned and transferred, and by these presents do sell, assign and transfer, unto the

172 said The Henderson Scaffold Hoist Co., the whole right, title and interest in and to the said improvement in —, and in and to the letters patent therefor aforesaid;

The same to be held and enjoyed by the said Henderson Scaffold Hoist Co., for its own use and behoof, and for the use and behoof of its legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In Testimony Whereof, I have hereunto set my hand and affixed my seal, at Chicago, in the County of Cook and State of Illinois, this 27th day of June, A. D., 1910.

(Signed) ELIAS H. HENDERSON. [SEAL.]

Signed, sealed and delivered in presence of

(Signed) OTTO LOESCHER.

STATE OF ILLINOIS,
County of Cook, ss:

I, David M. Ball, a Notary Public in and for the said Cook County, in the State aforesaid, do hereby certify, that Elias H. Henderson, personally known to me to be the same person whose name is subscribed to the foregoing Instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said Instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal, this twenty-seventh day of June, A. D., 1910.

(Signed) DAVID M. BALL, [SEAL.]
Notary Public.

173 PLAINTIFF'S EXHIBIT No. 3.

10/11/15, L. D. S.

2-392.

Department of the Interior,

United States Patent Office.

Received and recorded on the 2nd day of June, 1911, in Liber O, 86, page 394 of Transfers of Patents.

In testimony whereof, I have caused the seal of the Patent Office to be hereunto affixed.

[SEAL.] E. B. MOORE,
Commissioner of Patents.

Assignment.

Whereas, The Henderson Scaffold Hoist Company, of Chicago, a corporation organized and existing under the laws of the State of Illinois, is now the sole owner of Letters Patent of the United States No. 959,008, issued May 24, 1910 to Elias H. Henderson, for new and useful Improvements in Scaffold-Supporting Means, and of all rights under the same:

And whereas, New York Scaffolding Company, of New York, a corporation organized and existing under the laws of the State of New York, is desirous of acquiring an interest in the said Letters Patent;

Now therefore, for and in consideration of One Dollar to it in hand paid, the receipt of which is hereby acknowledged, and for other good and valuable considerations, the said The Henderson

Scaffold Hoist Company hereby sells, assigns and transfers
174 unto the said New York Scaffolding Company, the entire right, title and interest in and to the said improvements and in — to the said Letters Patent therefor;

To have and to hold unto the said New York Scaffolding Company, its successors and assigns, for the full term of the said Letters Patent.

In testimony whereof, the said The Henderson Scaffold Hoist Company, has caused these presents to be signed by its President and the corporate seal hereunto affixed this 12th day of May, 1911.

[SEAL.] THE HENDERSON SCAFFOLD HOIST COMPANY,

(Signed) By O. C. JUNGE, *President.*

STATE OF ILLINOIS,
County of Cook, ss:

On this 12th day of May, 1911, before me personally appeared O. C. Junge, to me known and known to me to be the President of The Henderson Scaffold Hoist Company, who executed the foregoing assignment, and thereupon duly a knowledged to me that he executed the same for the purposes therein mentioned.

(Signed) DAVID M. BALL,

[SEAL.] *Notary Public in and for the County of Cook, in the State of Illinois.*

Here follow

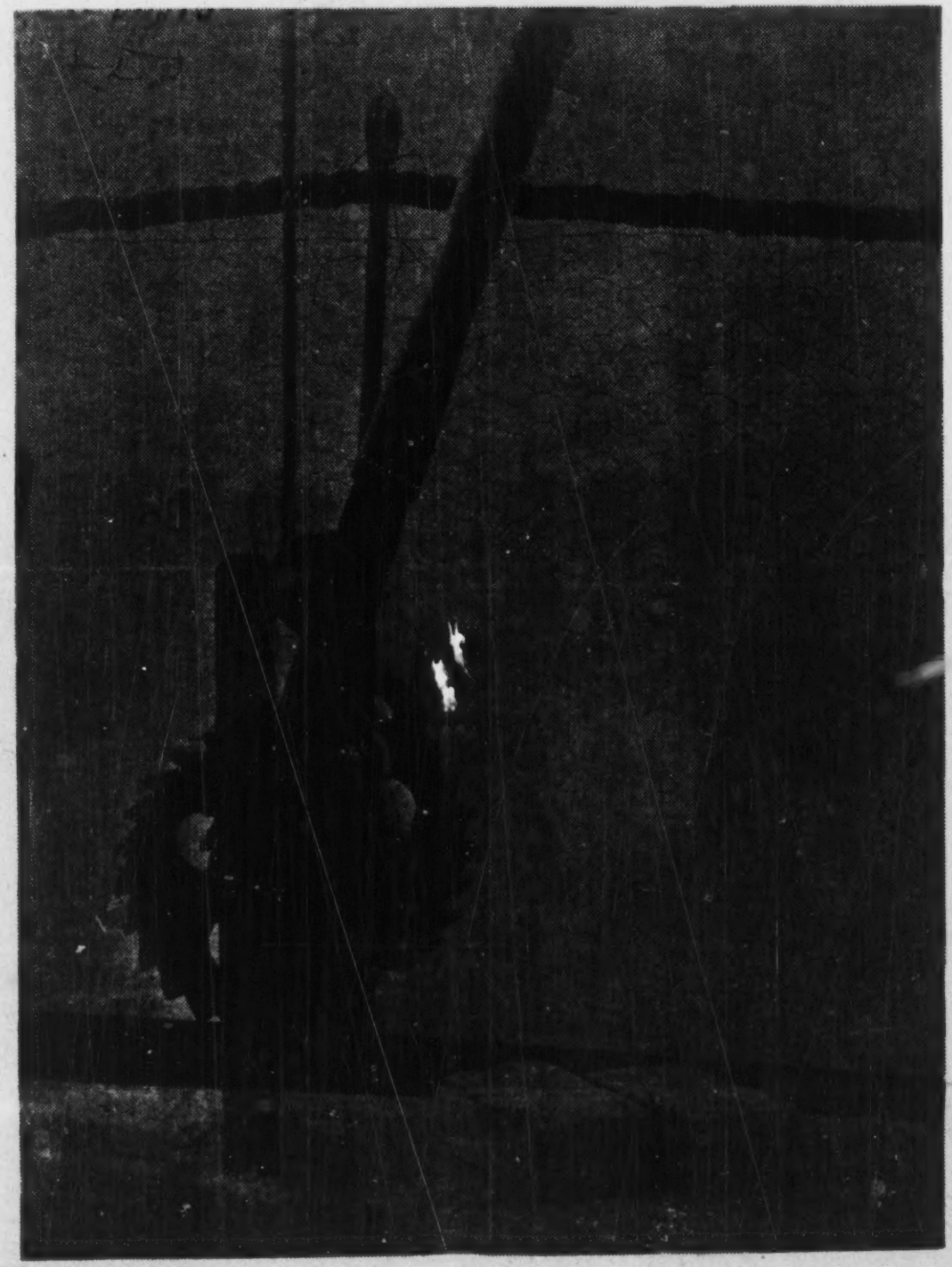
PHOTOGRAPHS, SKETCHES, ETC.,

Marked pages 175 to 205, incl.

712
New York Scaffolding Co
v.
Liebel Bunny Boat Co

180

Defendant's Exhibit A.



112
New York Scaffolding Co
v.
Liebel-Bennyless Co
} ∮ 179.

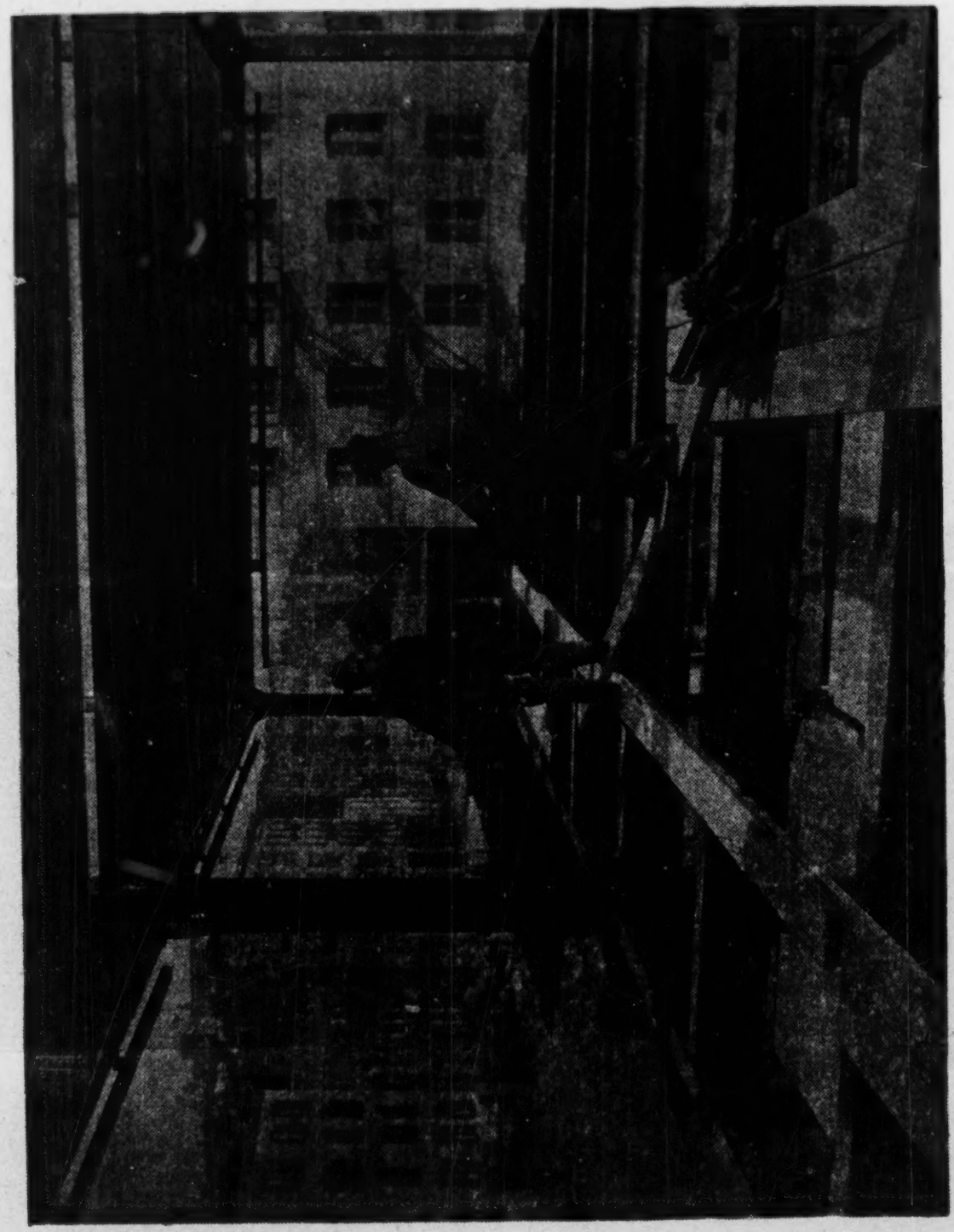
179

Plaintiff's Exhibit 10.

Newyork Scaffolding Co
Liebel-Bunny Con Co
D 178

178

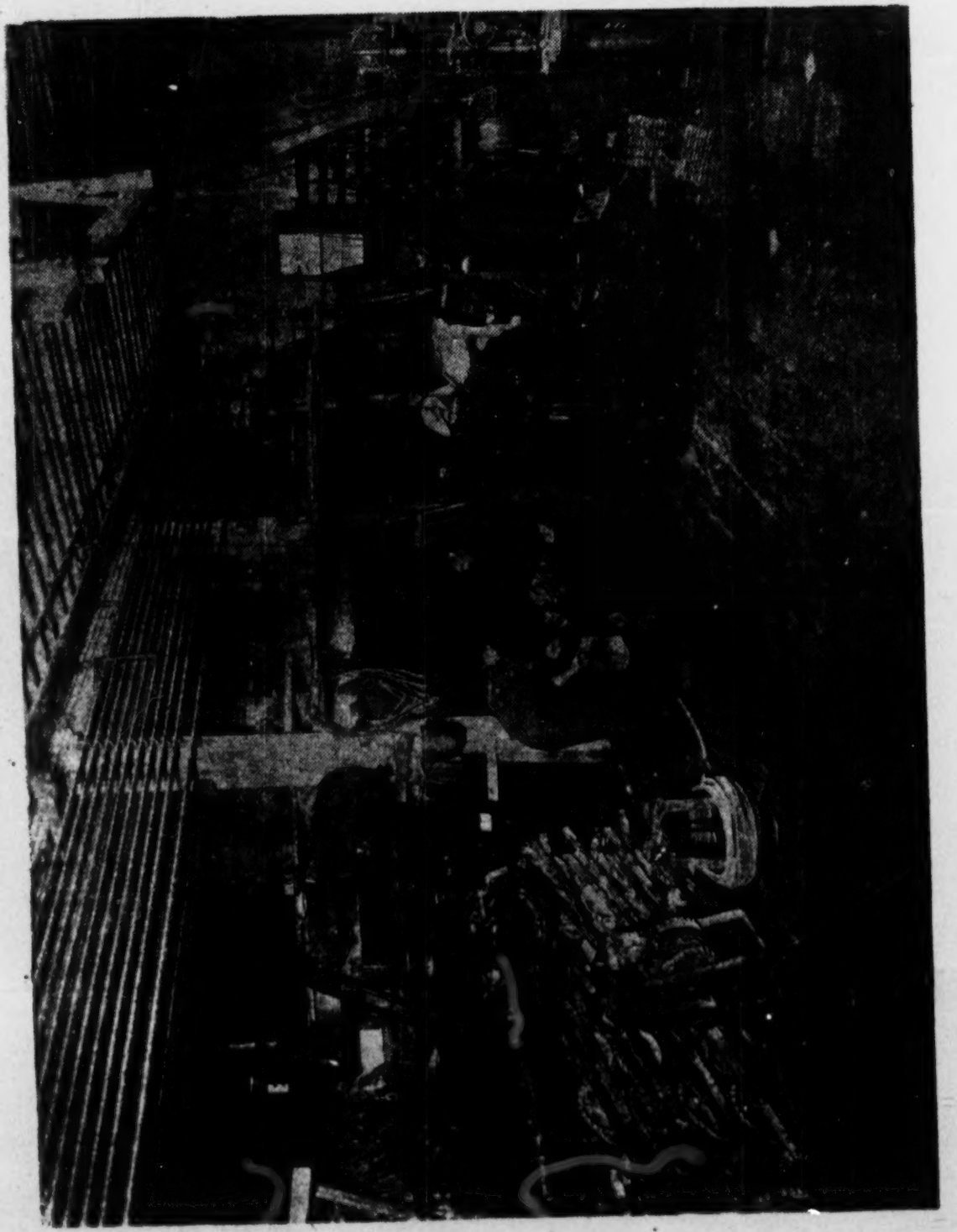
Plaintiff's Exhibit 9.



Nos.
New York Scaffolding Co
Lubel, Bunney Const. Co
} # 177

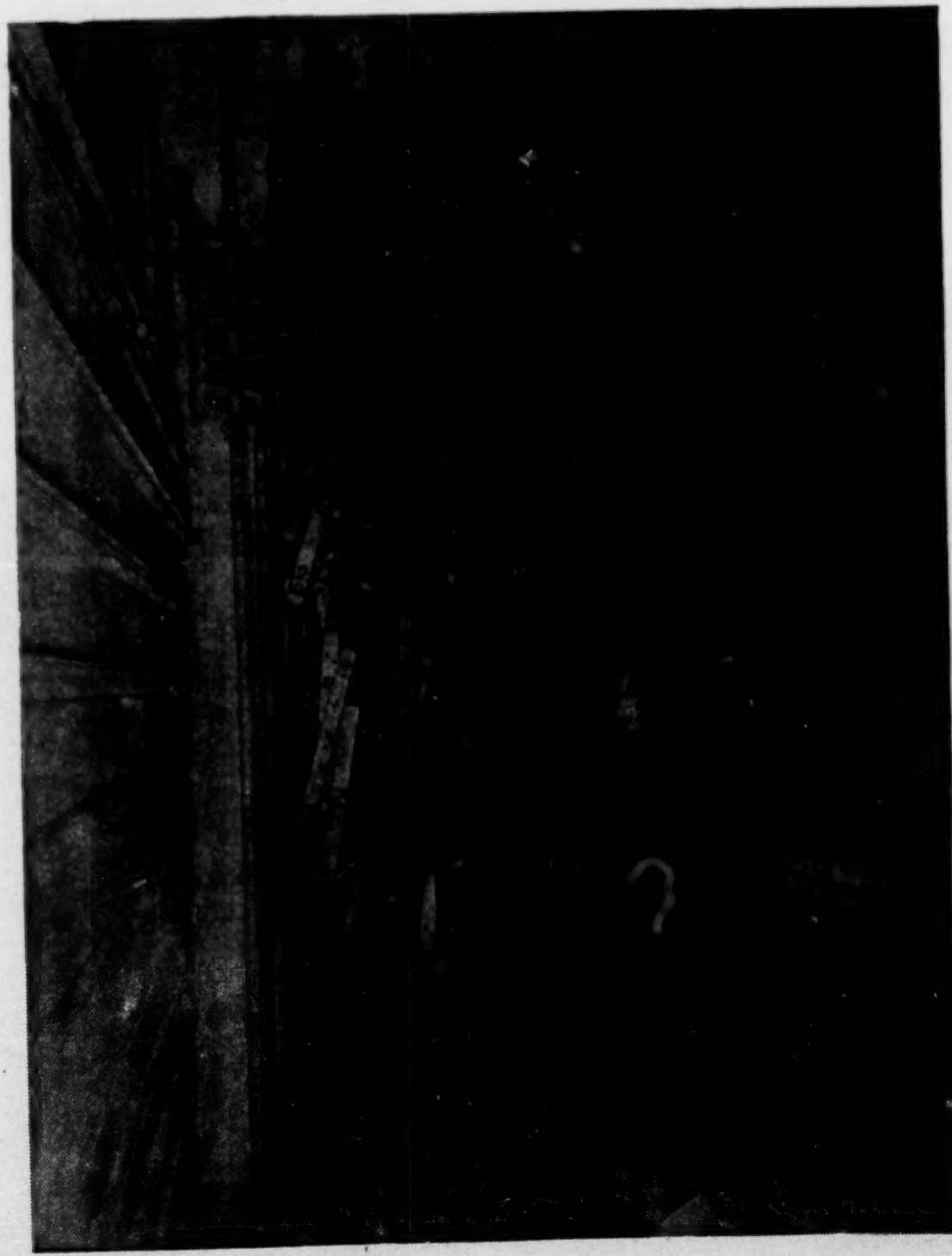
177

Plaintiff's Exhibit 8.



712
New York Scaffolding Co
Liebel-Binney Con'n Co
P

176.
Plaintiff's Exhibit 7



172.
Newyork Scaffolding Co } D175
v.
Libel. Binney Bros & Co

175

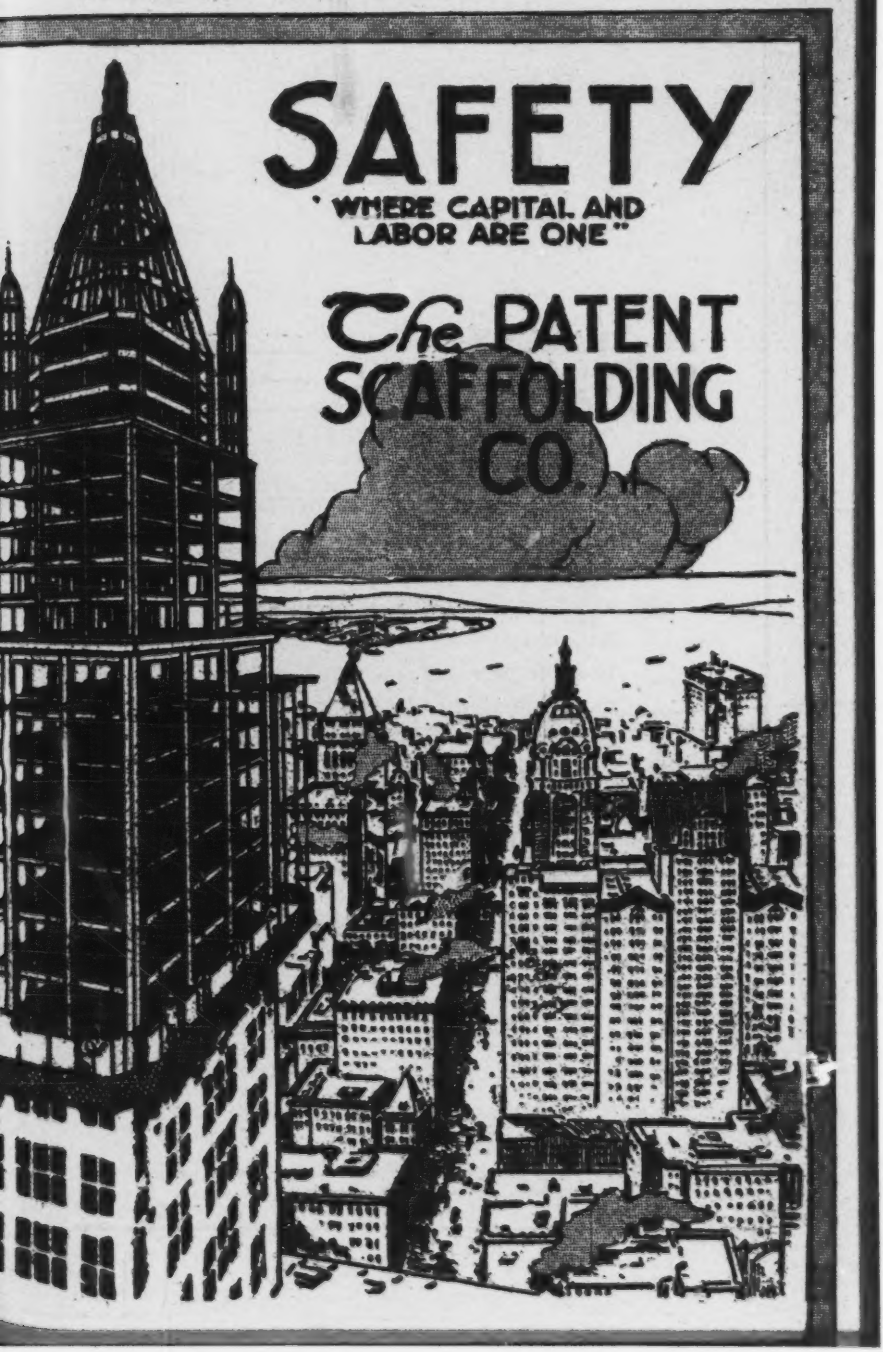
Plaintiff's Exhibit 6.

Property of The Patent Scaffolding Co. of Illinois, Chicago, U.S.A.
Machines rented not sold.
Patent No. 854,959—May 28-1907.
Machine No. 883.
O. K. Jennings.

Property of The Patent Scaffolding Co. of Illinois, U. S. A.
Machines rented not sold.
Patent No. 854,959, May 28-1907.
Machine No. —.

Property of New York Scaffolding Co., New York.
Machines rented not sold.
Patent No. 854,959, May 28, 1907.
Machine No. 406.

712
New York Scaffolding Co.
v.
Lesh Bunny Iron Co } In Eq. 122.
Defendant's Exhibit G.



SAFETY SCAFFOLDING SAVES

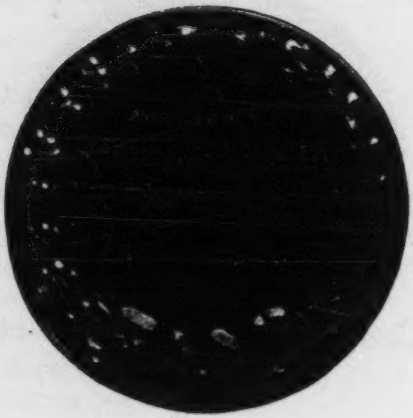
Life
Time
Money

—USED ON—

STEEL AND CONCRETE FRAME BUILDINGS
ICE HOUSE CONSTRUCTION
INTERIOR AND EXTERIOR OF STACKS
REMOVING CORNICES OF BUILDINGS
PLATFORMS FOR INTERIOR WORK
TEARING OUT OLD FRONTS
FACING RECONSTRUCTED FRONTS
BRICK FACING FOR CONCRETE BUILDINGS
CLEANING DOWN BRICKWORK
FIREPROOFING
GRAIN ELEVATORS
ELEVATOR AND AIR SHAFTS

OVERHEAD PROTECTION WHERE SUSPENSION MUST BE USED

AWARDED TO THE PATENT SCAFFOLDING COMPANY BY
THE AMERICAN MUSEUM OF SAFETY, NOVEMBER 21, 1910



"FOR THE NOTABLE DEVICE OF UTILITY, HAVING CONSERVATION OF LIFE AND LIMB IN THE BUILDING TRADES AS A SPECIFIC OBJECT OF ITS DESIGN."

From Presentation Address

The Patent Scaffolding Company

Lessor of Adjustable Safety Suspended Platforms

INQUIRIES AND CORRESPONDENCE SOLICITED. TERMS AND DETAILS PROMPTLY FURNISHED UPON REQUEST

NEW YORK
641 West 50th Street

CHICAGO
555 W. Quincy Street

ST. PAUL
1401 Pioneer Building

PACIFIC COAST

Portland — Seattle — Spokane
San Francisco — Tacoma — Los Angeles
PARROTT AND COMPANY, General Agents

TEXAS

Dallas — Houston — San Antonio
First National Bank Building

The equipment supplied by us receives our expert care and supervision and is leased under contract with the owners of the patents, who will prosecute all infringements.

The Woolworth Building, 55 stories and 750 feet above the street level. The tallest and largest building in the world. The terra cotta for the 55 stories was laid by using our safety scaffolding machines without the loss of a single life.

SAFETY

A BULLETIN OF PREVENTION

"AND NOW LET US CONSERVE HUMAN LIFE"

Vol. 1 AUGUST, 1912 No. 1

Published by THE PATENT SCAFFOLDING COMPANY, 647 W. 50th St., New York City

Foreword We take pleasure in presenting to the building trade by means of this booklet, the first of a series of safety bulletins, which we will issue from time to time for the purpose of obtaining co-operation to prevent scaffolding accidents and thus to save human life.

We hope at the same time to bring our organization, its workings, its motives and purposes into closer touch with our patrons and those whom we wish to have for our patrons.

We feel that we are a small part of the great world-wide movement that is endeavoring to reduce accidents and make safer our large commercial enterprises. We wish to describe in the pages of "Safety" how we are striving to aid in this most important work by making safer the dangers of scaffolding. Our record to date has been most gratifying and we are anxious to broaden our field of usefulness in conserving life. Moreover, by the adoption of our method, the cost of scaffolding is materially reduced.

We desire to express our appreciation to those with whom, in the past, we have been so pleasantly related and trust that we may be favored with a continuance of these relations in the future.

Accidents and Accident Prevention

The chief function of government is to make it hard to do wrong and easy to do right. It should be the most important function of honorable business to make it hard to get hurt and easy to be safe. In accordance with this principle, it is now commonly accepted that the employer of labor is bound to carry on his business so as not to expose the workmen to unreasonable risks.

Courts of Appeal the world over are struggling with the meaning of the word accident, and their decisions mean much to every citizen as well as to every employer of labor. The higher Courts have recently decided that employers should be held more strictly accountable for personal injury by accidents that may be received by employees in the course of employment. Employers are now even held to be liable for infections from materials handled, injuries resulting from mere fright or shock and many other causes which have heretofore seemed personal matters.

New York City averages more than 3,500 deaths by accident every year, or more than nine per day. One-twelfth of these fatalities are caused by unsafe rigging used on buildings and in building construction, or nearly one death per day in New York City alone from this cause.

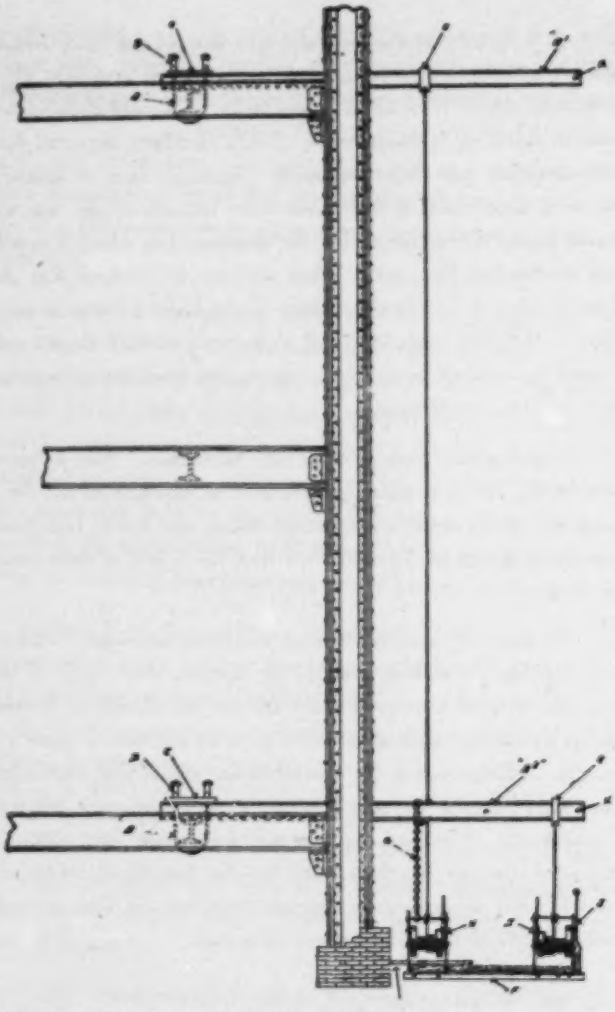
More accidents occur in America than in any other country in the world. We have anywhere from two to ten times as many as any other civilized country, and the ratio is increasing so fast that the statisticians almost doubt the accuracy of their own proven figures.

The annual economic loss to this country, due to fatal and non-fatal accidents, is estimated at $250,000,000. Of this amount more than $40,000,000 is charged to the account of unsafe rigging.

It is stated by eminent authorities that of the three billion dollars annually lost to the United States through accidents, sickness and death, one-half is preventable. German statisticians, after a searching investigation of 15,970 accidents, reported that fifty-three per cent. were avoidable. In many lines of industry in the United States it is a conservative estimate to say that we could reduce the accidents and the economic loss which they entail seventy-five per cent. When we stop to consider that the total number of non-fatal accidents in the United States is more than 1,000,000 annually, and that over 60,000 deaths are caused by accident annually, it can be seen what saving seventy-five per cent. would mean.

The building trade is essentially hazardous. This is borne out by the fact that annually 200,000, or one-fifth of all these accidents which occur in the United States, are due to falls from unsafe equipment used on buildings, and that 5,000 of them result in death.

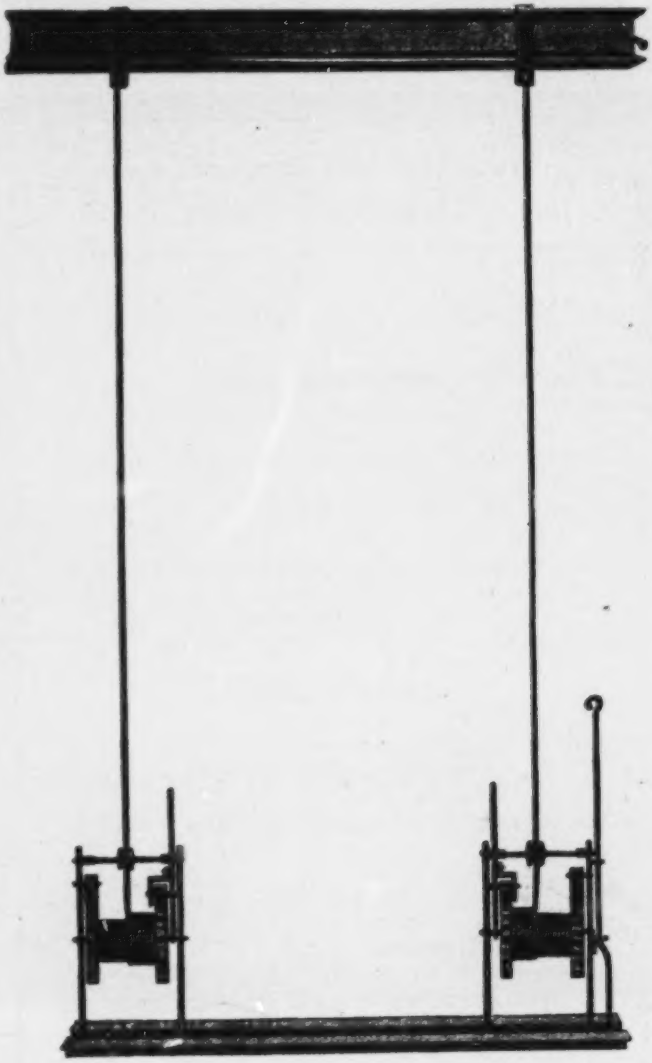
We believe, and the leading architects, engineers, builders, and insurance companies confirm our opinion, that many of the fatalities in modern construction work can be eliminated through the use of safety scaffolding. We have no statistics to show the number of lives, which the ever-increasing use of our scaffolding has saved, during the period of more than five years since its introduction. However, we can say with pride that since our safety scaffolding has been used by the prominent contractors and builders throughout the country there has not been a single accident due to the failure of our equipment.



How scaffolding can be shifted to higher levels without dismantling the platform or delaying the work.

DESCRIPTION OF PARTS

A. Outrigger I Beams. B. Anchor Bolts. C. Anchor Plates. D. Pipe Washers. E. Shackles. F. Purlins. G. Shifting Chain. H. Inside Drum. I. Outside Drum. J. Guard Rail Support. K. Stop Bolts.



Safety Scaffolding Machine.

A Few Pointers

Using Our Scaffolding Machines Means for the Builder

SAFETY

EVERY PART IS MADE OF BEST MATERIAL

EVERY MACHINE THOROUGHLY TESTED AND CONSTANTLY INSPECTED

EVERY MACHINE CAPABLE OF CARRYING MANY TIMES LOAD REQUIRED

CANNOT RUN DOWN

AUXILIARY SAFETY LOCKS

SUPPORT FOR GUARD RAIL AND WIRE SCREEN ON PLATFORM, PREVENTS MEN FROM FALLING, OR MATERIAL FROM DROPPING UPON THOSE BELOW

CONVENIENCE

INDEPENDENT OF INTERIOR CONSTRUCTION

NO STORAGE OR CARTAGE OF CUMBERSOME HORSES AND HEAVY PLANKS

INSTALLED AT SHORT NOTICE AND PROMPTLY REMOVED

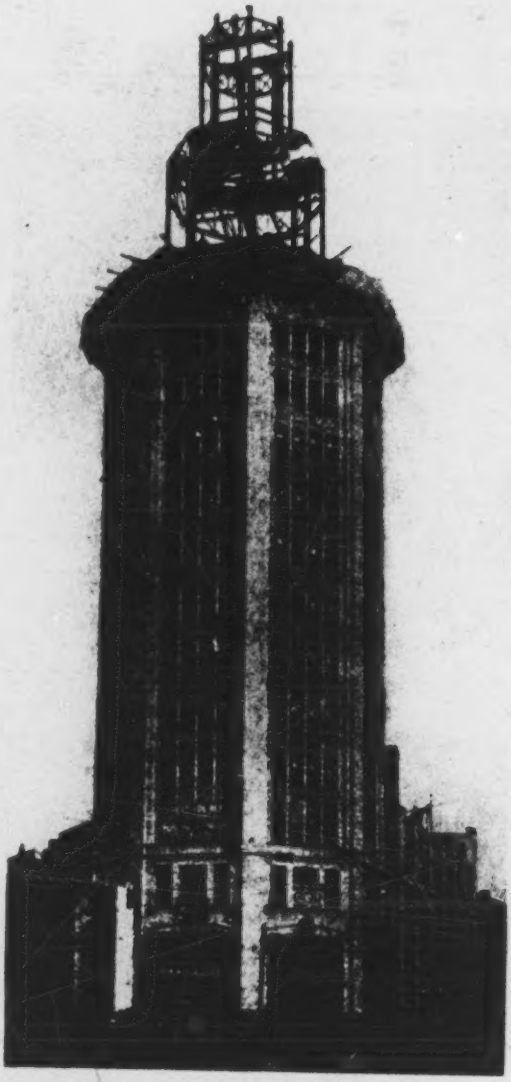
ECONOMY

NO OPERATING EXPENSE

RAPIDITY OF CONSTRUCTION, AS MASONS CAN WORK CONTINUOUSLY, BENCH HIGH AND UPON SECURE FOOTING

NO MAINTENANCE OR INTEREST CHARGES ON EQUIPMENT

Showing the bricklayers working in an easy position due to the fact that the platform may be raised to a convenient height.



Our scaffolding may be rigged with wind shields. This picture shows work progressing on a Buffalo building with the thermometer below zero and a high wind blowing.

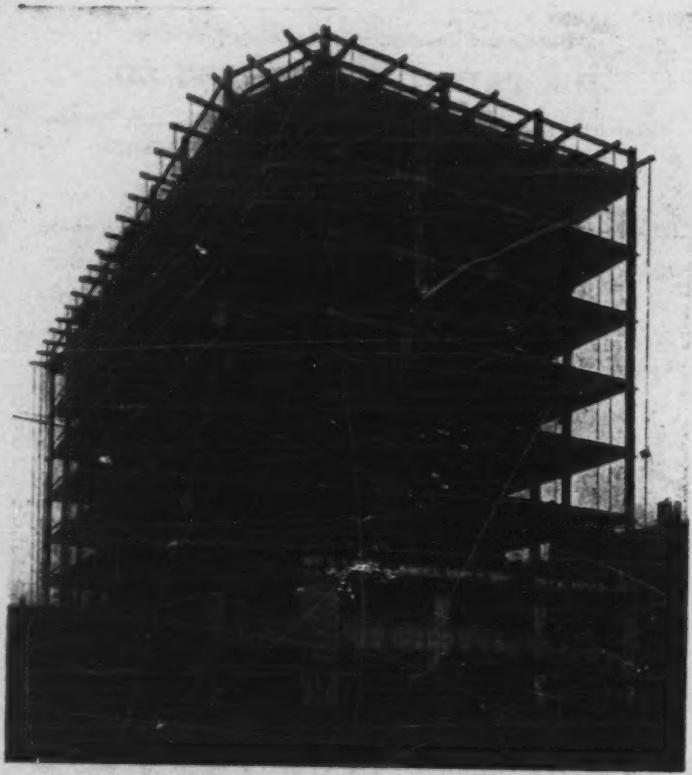
History and Description of the Safety Device of

THE PATENT SCAFFOLDING CO.

Taken from a special issue of the Bulletin of the American Museum of Safety at the time of the awarding of the Scientific American Gold Medal

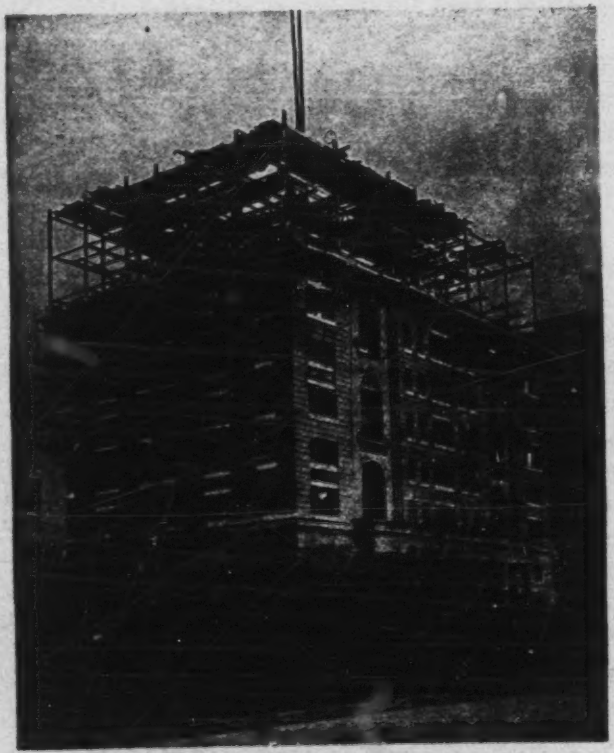
The lives of men, working at even a moderate elevation above the ground during construction work, have always been in more or less jeopardy, as the high insurance premiums for these risks show. In an endeavor to lessen these risks, builders have constructed platforms or scaffolding to make the workmen's footing more secure, but despite these precautions, which in some cases have resulted in the erection of a perfect forest of timbers supporting the scaffolding, the list of casualties has been appalling. The size of this list was greatly increased by the introduction of the skyscraper. This ever present danger for the workmen produced the invention of safety scaffolding. In five years in New York alone 660 deaths were caused by falls from new buildings, while 177 deaths were caused by falls from the old form of wooden scaffolds supported by horses and cantilevers. Since the introduction of the new form of scaffolds, there have been no fatal accidents where it has been used, although in the last two years 319 buildings were erected with its aid, where 8,265 machines were employed and not one man was injured.

The construction, installation and operation will be readily understood by reference to the photographs. The continuous platform is supported at intervals of approximately ten feet by a safety scaffolding machine composed of two drums, around which steel cables are roved, and the necessary supporting members, including a "putlog" which serves to support the planks forming the platform, upon which the masons stand. The upper ends of the cables are securely attached to a horizontal steel "I" beam



A continuous platform being raised on one of our Chicago jobs.

or "outrigger," which is fastened by means of a "U" shaped anchor bolt to the framework of the building. Hence the outriggers support the continuous suspended platform, which is raised or lowered by operating the two levers on each machine, thus rotating the drums and either winding or unwinding the cables thereon. The winding force is applied to each drum by the lever arm, having a pawl mounted thereon, which engages one of the



A comparison of the safe and unsafe methods of providing a platform for masons. This was a practical test made by a New York builder when safety scaffolding was first introduced.

ratchet wheels forming the sides of the drum. The platform can be raised or lowered at a considerable speed by a few strokes of the lever, easily applied by one man. Moreover, the platform can be operated in sections, which is often important when material does not arrive, or where the outline of the building is irregular.

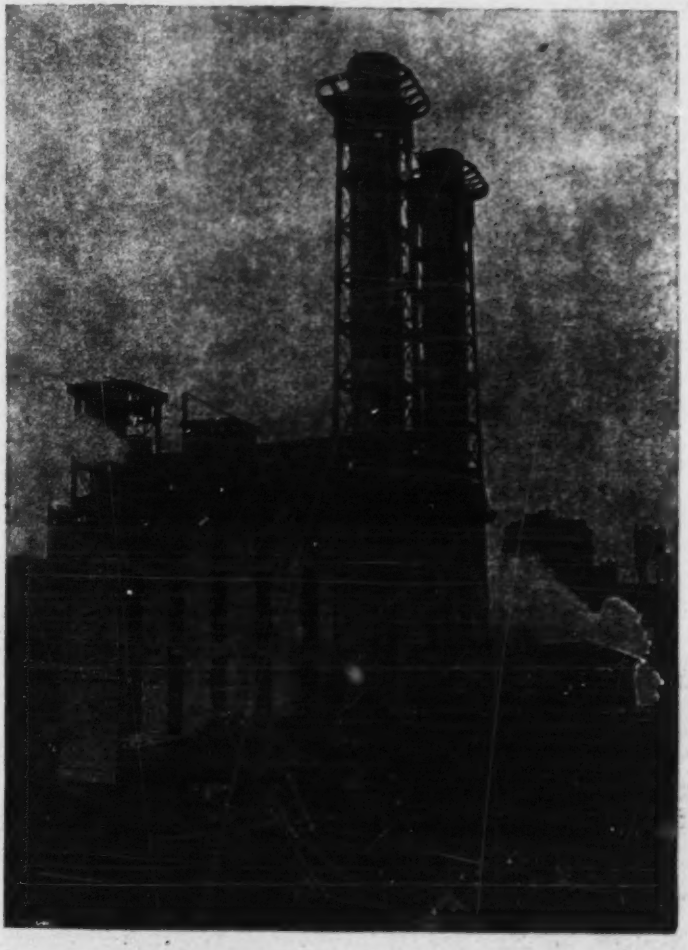
A Severe Test On the morning of December 20th, 1910, Manhattan Island was shaken from the Battery to Harlem by a terrific explosion in the train yards of the New York Central Railroad at Grand Central Station. The number of fatalities was twelve, while 106 persons were injured and property for twelve blocks around was badly damaged.

Almost directly over the spot where the explosion occurred fifty men were at work on one of our safety suspended platforms laying up the brick walls of the new power house. When the explosion took place the platform was raised several feet and the men deposited unharmed inside the building, while the platform dropped back to its normal position none the worse off for the accident. It was perhaps the most severe test to which a scaffold has ever been subjected. Any other type of scaffolding would have been blown to pieces and the workmen probably all killed. In its account of the explosion The New York Herald said:

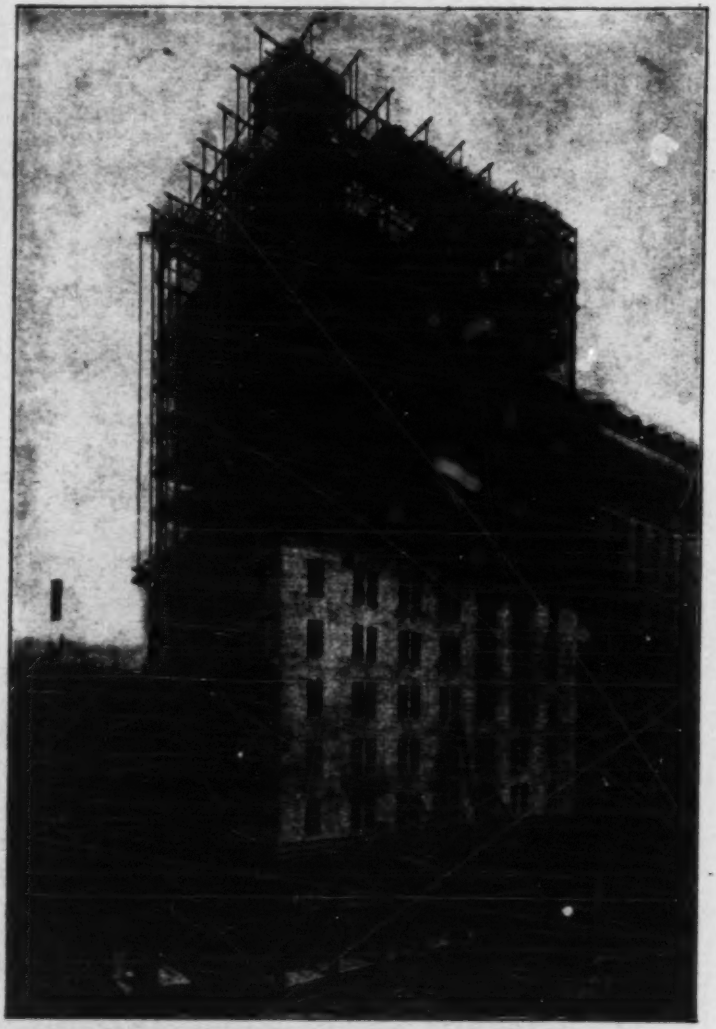
"The force of the explosion that wrecked the power house at the southwest corner of Lexington Avenue and 50th Street, caused damage to property embraced within twelve blocks. The greatest damage was done to the buildings on the east side of Lexington Avenue between 46th and 53rd Streets, and along 49th, 50th and 51st Streets to Third Avenue. Windows were broken as far south as 42nd Street, and north as far as 60th Street."

* * * * *

"Outside, on the top part of the building, about fifty men were working on a scaffold, one hundred and fifty feet from the ground. The force of the explosion blew every one into the building. Ten men on another scaffold were hurled into the building through the windows."



The scene of the terrible explosion in the Grand Central yards, December 20, 1910, in which 12 were killed and 106 injured. This picture showing the new power house was taken by a staff photographer of the New York Herald immediately after the accident and was published in the Herald. It shows the safety scaffolding in place and undisturbed by the force of the explosion which wrecked property for twelve blocks around. Fifty men working on this scaffold, almost directly over the explosion, were uninjured.



Safety scaffolding with substantial guard-rail protection, in use on Toronto's tallest building.

Consider the cost of filling the holes left in front of this building resulting from the use of this form of scaffolding, which also took a considerable amount of material and labor to erect. Compare this method with that shown on the opposite page where safety scaffolding machines are used.

OUR SERVICE AND WHAT IT MEANS TO THE BUILDER

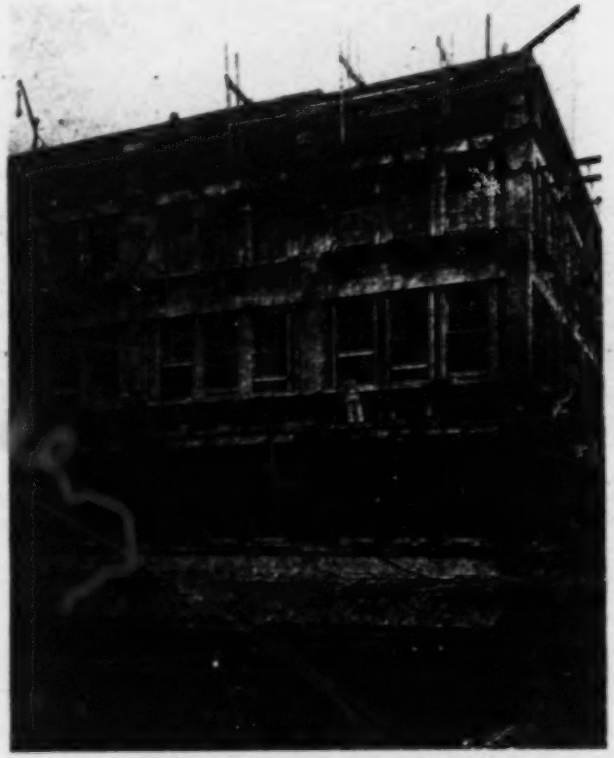
We have endeavored to indicate briefly to the builder, in the preceding pages, the many advantages to be derived from the use of our safety scaffolding through Safety, Convenience and Economy. Now we would like to say a word about our service.

No one trade or profession demands as good service as that of the Builder. It is absolutely essential to the financial success of a building enterprise, and to the reputation of the builder, that material should be delivered promptly and that it should be of satisfactory quality. We feel that we can fill both of these requirements, in supplying scaffolding for "skyscrapers" anywhere in the United States or Canada. We have manufactured and carry in stock a sufficient quantity of machines to supply any number when desired, thus eliminating the loss of time and money due to delays. Deliveries can be made promptly, upon reasonable notice, to any city, from our numerous distribution points, which are located throughout the country as indicated on the title page.

The quality of our machines can best be described by their excellent record, which has been made possible by the careful system of supervision in force in our factory. Nothing but the best of specially selected material has been used, and the steel cables are designed and made to meet our special requirements. The design of our machine is the outcome of years of experimenting.

When a machine is returned to one of our repair plants, it is inspected, oiled, greased and painted, then stored in a dry place, so that it will be in perfect condition when sent out again. Another inspection is made when the machine again goes into service. At intervals, both machines and parts, new and in service, are tested in the Civil Engineering Testing Laboratory at Columbia University, New York City.

Due to the above and to many other considerations, the trade has always preferred to rent our machines than to purchase them, as the Builder can be supplied with our service without having the care and responsibility of providing it, although the latter alternative was offered at the inauguration of this method of scaffolding. Moreover, the quantity of machines used by a builder is rarely the same two years in succession, which means that there would



Facing a concrete building with brick from a platform, suspended over train shed, in a large manufacturing center without interruption to shipping.

be either a surplus or a shortage if the machines were owned. To supply this demand, we have assembled a corps of men specialized in this business, who are qualified to see that proper equipment is furnished and correctly used. This method has met with such approbation, that we have received many letters, which we have on file, as testimonials from ARCHITECTS, ENGINEERS, BUILDERS and INSURANCE COMPANIES.

The contractor on this building wrote us that it would have been impossible to have continued the construction of this building last winter without our safety scaffolding machines. The weather which was the coldest in 42 years was overcome by placing salamanders on the platform.

Although all of these authorities recognize the difficulties encountered in the scaffolding of "skyscrapers," none have had them brought home more forcibly than the latter class, whose business it is to study such hazards. We greatly prize the letters of commendation which we have received concerning our methods and equipment from the following insurance companies:

Aetna Life Insurance Company
American Fidelity Company
Casualty Company of America
Commercial Casualty Insurance Company
Employers' Liability Assurance Corp.
Fidelity and Casualty Company
Fidelity and Deposit Company
Frankfort General Insurance Company
General Accident Assurance Corp., Ltd
Globe Indemnity Company
London Guarantee & Accident Co., Ltd.
Maryland Casualty Company
Massachusetts Bonding & Insurance Co.
New Amsterdam Casualty Company
New England Casualty Company
Ocean Accident & Guarantee Corp., Ltd.
Preferred Accident Insurance Company
Royal Indemnity Company
Standard Accident Insurance Company
Travelers Insurance Company
United States Casualty Company
U. S. Fidelity & Guaranty Company

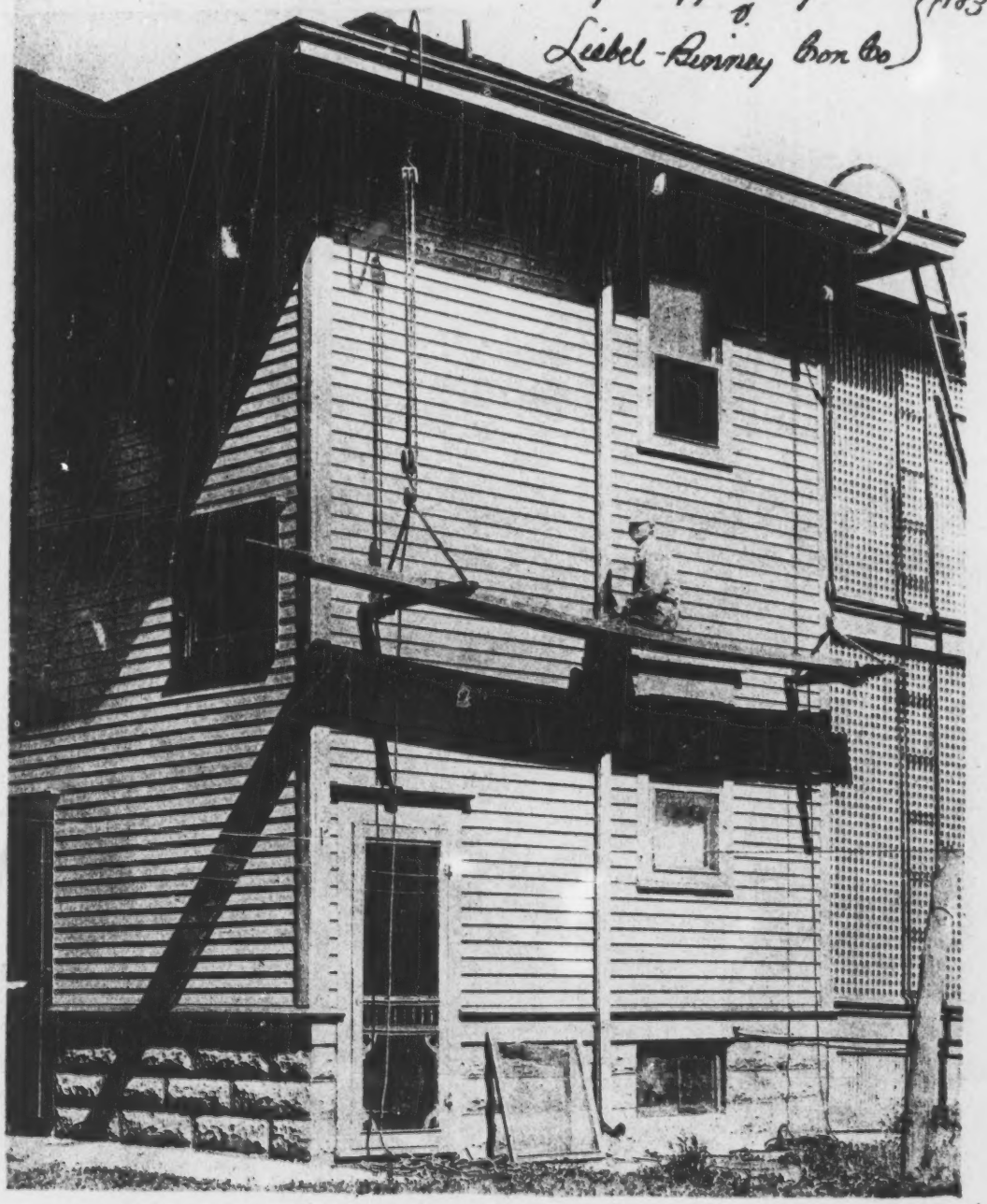
The above mentioned letters have been reproduced in our Safety Bulletin No. 2, copy o which we will gladly send upon request.

Some of the Buildings Scaffolded By Us

Buildings	No. Machines	Builders	Location
Union Pacific	95	James Stewart & Co.	Omaha, Neb.
M. E. Church & Office	42	Jas. Black, Mason & Const. Co.	Kansas City, Mo.
Fidelity & Deposit	39	Morrow Brothers	Baltimore, Md.
New Gatin's Hotel	7	Geo. A. Fuller Co.	Atlanta, Ga.
Hamilton Nat'l Bank	22	Geo. A. Fuller Co.	Chattanooga, Tenn.
Robertson	15	Architectural Stone Co.	Cincinnati, O.
Mural Temple	20	Albert Von Spreckles	Indianapolis, Ind.
Allworth	31	Lanquist & Illsley	Duluth, Minn.
Morris	39	Geo. A. Fuller Co.	Philadelphia, Pa.
Oliver	103	No. Western Terra Cotta Co.	Pittsburgh, Pa.
Railway Exchange	150	Westlake Construction Co.	St. Louis, Mo.
Bruno Sakrus Tower	20	William H. Parker	Baltimore, Md.
Schwind	8	A. Bentley & Sons	Dayton, O.
So. W. Tel. & Tel	50	Fred A. Jones Bldg. Co.	Houston, Tex.
Hartman	26	Selden Breck Construction Co.	Columbus, O.
Thalheimer	25	Fulton Brick Works	Richmond, Va.
Grain Elevator	100	Witherspoon Engler Co.	Boston, Mass.
Army & Navy	40	Wm. J. McClure	Washington, D. C.
Michigan Central Depot	131	Geo. A. Fuller Co.	Detroit, Mich.
People's Gas	34	No. Western Terra Cotta Co.	Chicago, Ill.
Adolphus Hotel	67	Kiel & Deuss Construction Co.	Dallas, Tex.
Blackstone	106	Geo. A. Fuller Co.	Chicago, Ill.
La Salle	110	Geo. A. Fuller Co.	Chicago, Ill.
Cotton Exchange	72	American Construction Co.	Dallas, Tex.
Hotel Statler	130	James L. Stuart	Cleveland, O.
Athletic Club	18	Waymouth-Crowell Co.	Los Angeles, Cal.
Hearst	75	Mahoney Bros.	San Francisco, Cal.
Lincoln High School	150	Louis A. Hicks	Portland, Ore.
Telephone	30	A. T. Spence	Spokane, Wash.
Hogue	28	Thompson-Starrett Co.	Seattle, Wash.
Whitehall	127	Geo. A. Fuller Co.	New York, N. Y.
Gimbel Store	150	Thompson-Starrett Co.	New York, N. Y.
Hotel McAlpin	147	Thompson-Starrett Co.	New York, N. Y.
Ritz-Carlton Hotel	68	M. Reid & Co.	New York, N. Y.
Rockefeller Inst	42	Marc Eidlitz & Son	New York, N. Y.
Martinique Hotel	43	Chas T. Wills	New York, N. Y.
Insurance Companies	90	Thompson-Starrett Co.	New York, N. Y.
McAdoo Terminal	206	Geo. A. Fuller Co.	New York, N. Y.
City Investment	116	Hedden Construction Co.	New York, N. Y.
Singer Tower	32	Thomas J. Brady	New York, N. Y.
Belnord Apartments	190	Geo. A. Fuller Co.	New York, N. Y.
Woolworth	112	Thompson-Starrett Co.	New York, N. Y.
Canadian Pacific Office	40	Geo. A. Fuller Co., Ltd.	Toronto, Canada.
Carlton Hotel	28	Geo. A. Fuller Co., Ltd.	Montreal, Canada.
Union Trust	28	Geo. A. Fuller Co., Ltd.	Winnipeg, Canada.
C. P. R. Hotel	100	Peter Lyall & Sons	Calgary, Canada.
World	30	Smith & Sherbourne	Vancouver, Canada.

Defendant's Exhibit D.

712
NY Scaffolding Co
v.
Liebel-Bierney Iron Co
p183



712
N.Y. Scaffolding Co
v
Leibd-Binny Cons Co } p 185.

(No Model.)

C. D. BOWYER & W. H. CASPERSON.

PAINTER'S STAGE.

No. 382,252. Patented May 1, 1888.

Fig. 1.

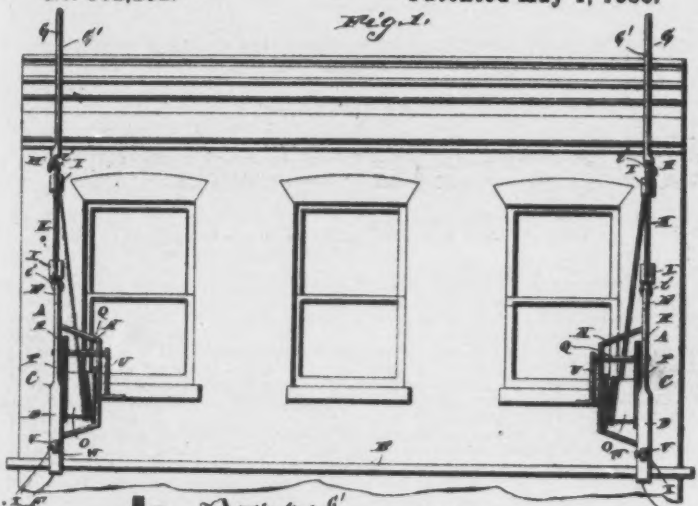


Fig. 3.

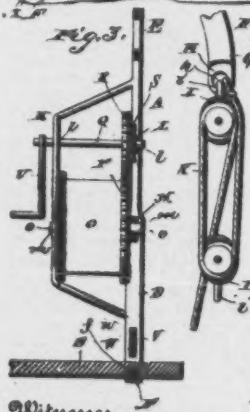


Fig. 4.

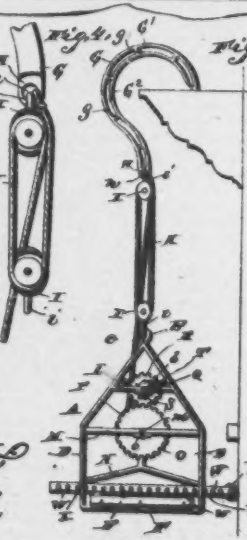


Fig. 2.

Fig. 5.

Witnesses.
C. F. B. Taylor
C. E. Mayhew

Inventor.
Charles D. Bowyer.
William H. Casperson.
by C. A. Snow & Co.
Attorneys.

UNITED STATES PATENT OFFICE.

CHARLES D. BOWYER AND WILLIAM H. CASPERSON, OF CAMDEN, NEW JERSEY.

PAINTER'S STAGE.

SPECIFICATION forming part of Letters Patent No. 382,252, dated May 1, 1888.

Application filed December 14, 1887. Serial No. 257,696. (No model.)

To all whom it may concern:

Be it known that we, CHARLES D. BOWYER and WILLIAM H. CASPERSON, citizens of the United States, residing at Camden, in the county of Camden and State of New Jersey, have invented new and useful Improvements in Painters' Stages, of which the following is a specification.

Our invention relates to improvements in painters' stages; and it has for its objects to provide a simple, strong, and effective device which may be readily applied in the operative position to a house.

We desire, further, to provide a stage with improved means whereby the person thereon may raise and lower the same, thus obviating the necessity of a person on the ground to operate the stage.

It is our object, further, to provide improved means for maintaining the stage at the proper or desired distance from the wall of the house.

With these objects in view the invention consists in a certain novel construction and arrangement of parts, fully set forth hereinafter in connection with the accompanying drawings, wherein—

Figure 1 is a front view of a stage attached in the operative position to a house. Fig. 2 is a side view of the same. Fig. 3 is a vertical central section of one of the supports. Fig. 4 is a detail view of the connection between the hook and the frame of the stage. Fig. 5 is a similar view with the hook and frame connected, so as to form a stationary stage.

Referring by letter to the drawings, A designates the support, one of which is arranged at each end of the plank B, and the said support comprises the frame C and the hook G. The frame consists of the side bars, D D, which converge at their upper ends and are connected to a disk, E, and the horizontal supporting-bar F, which is provided on its upper side with spurs *f f*, adapted to engage in the plank. The hook G is double, and consists of the outer bar, G', and the inner bar, G², which are attached at their lower ends to a disk, H, and converge at their free ends to a point. Bracing-webs *g* are arranged between the bars G' and G² at intervals to hold them at the proper distance apart. The disk E is provided with a central aperture, *h*, and the disk E is provided with a similar central aperture, *e*.

I I represent pulley-blocks, which are attached, respectively, to the disks E and H by means of the hooks *i i*, which are engaged in the apertures *h* and *e*, and K represents a rope which runs through the said blocks. A horizontal brace, L, is arranged between the converging portions of the side bars, D D, and it is provided with a bearing, *l*. A similar brace, M, is arranged between the side bars a short distance below the brace L, and it is also provided at its center with a bearing, *m*.

N represents a bracket which is attached to the frame C, and it is provided with bearings *l* and *m*, which align, respectively, with the bearings *l* and *m* in the frame.

O represents a drum, provided with trunnions *o o*, which are mounted in the bearings *m m*, and the drum is also provided with a peripheral series of gear-teeth, P. A shaft, Q, is mounted in the bearings *l l*, and it carries a gear-wheel, R, which engages with the teeth on the drum, whereby, when the gear-wheel is rotated, the drum is similarly operated. A ratchet-wheel, S, is secured rigidly to the shaft or the gear-wheel, and it is engaged by the pawl T, which is mounted on the brace L or any other suitable portion of the frame. The opposite end of the shaft Q is provided with a crank, U, whereby the gear-wheel may be rotated. The end of the rope K is attached to the drum, and therefore the frame C may be raised or lowered at will by winding or unwinding the rope. The pawl T will hold the frame at the desired elevation.

The operation of this device will be readily understood from the foregoing description. The stage is suspended from the cornice of a building by engaging the hooks G G therein, and therefore the device may be used in positions where it is impossible for a support from the ground to be erected; also, it is not always convenient to use stage-supporting brackets which must be attached to windows, as it may happen that the windows are not in the desired positions. The hooks G may, however, be engaged over the sills of windows where it is preferred.

V V represent aligned apertures in the side

bars, D D, and an adjustable guide-arm, W, is arranged in the said apertures and extends inward toward the house to act as a fender. The arm W is provided with a series of perforations, *w w*, which are adapted to receive pins X X. These pins are inserted in the perforations on the outer sides of the bars D D, so as to secure the adjustable arm in the desired position. The inner or contact end of the arm is provided with a small rubber roller, Y, which is adapted to bear against the wall of the house and roll on the same when the stage is raised or lowered. The stage is thus guided in its vertical motion and prevented from swinging. The arm W passes over the end of the plank B, close to the upper surface thereof, and therefore prevents the same from being lifted from the spurs *f*, and thus detached from the supports. The arms W, therefore, serve two purposes—namely, that of an adjustable guide-arm and a retaining-bar for the stage-plank.

The blocks and the other portions of the hoisting device may, if desired, be removed, and the bolt Z may be engaged in the apertures *e* and *h* in the disks, as shown in Fig. 5, to render the stage stationary. It will be found of advantage, however, to be able to vary the elevation of the stage at will.

The hook G is made in the peculiar form described for the reason that it may thus be made much lighter than a solid hook for the same strength. The outer and inner bars mutually brace and support each other for the reason that they are rigidly connected at intervals by the bracing-webs.

The absence of complicated construction in this stage renders it cheap to manufacture, easily operated, not liable to get out of order, and light, thereby enabling it to be readily transported. There is no erection of scaffolding or heavy frame-work in connection therewith. It is arranged in the operative position simply by engaging the hooks in the cornice of the building and drawing the plank-supporting frames up by means of the hoisting devices.

Having thus described our invention, what we claim, and desire to secure by Letters Patent of the United States, is—

1. In a stage, the combination of the hooks G G, the frames C C, depending from the hooks and having the horizontal supporting-bars F, the plank B, resting at its ends on the bars F, and the arms W W, attached to the frames and passing over the plank, substantially as and for the purpose specified.

2. In a stage, the combination, with the hooks, of the depending frames C, having supporting-bars F F, provided with spurs *f f* on their upper sides, the plank B, resting at its ends on the said bars and engaging the spurs, and the removable arms W W, attached to the frame and passing over the plank adjacent to the upper surface thereof, substantially as specified.

3. In a stage, the combination, with the hooks G G, of the frames C C, depending therefrom and having the side bars, D D, provided with aligned apertures V V, and the horizontal bars F F, the plank B, attached to the frame, the guide-arms W, arranged in the apertures V V and having the perforations *w w*, and the pins X X, engaging the perforations and bearing against the bars D D, substantially as specified.

4. In a stage, the combination of the hooks G, comprising the outer and inner bars, G' and G², converging to a point at their upper ends, the bracing-webs arranged at intervals between the said bars, and the apertured disk H, attached to the lower ends of the bars, the frames C C, comprising the converging side bars, D D, connected at their lower ends by the horizontal bars F, and the apertured disk E at the upper ends of the side bars, the plank B, resting at its ends on the horizontal bars F, the pulleys I I, having hooks *i i*, which are engaged in the apertured disks, the ropes K, passing through the pulleys, and the drums mounted on the frames C and adapted to wind or unwind the ropes, substantially as and for the purpose specified.

5. In a stage, the combination of the hooks G G, having pulleys I attached to their lower ends, the depending frames C C, having pulleys I attached to their upper ends, the inward-extending guide-arms W, attached to the frames and having rollers on their ends, and the hoisting devices mounted on the frames C and comprising the drums O, having peripheral series of gear-teeth, the gear-wheels R, meshing with the teeth on the drums and having a crank, U, attached thereto, the ratchet-wheels carried by the gear-wheels, the pawls engaging in the ratchet-wheels, and the ropes K, passing through the pulleys I I and attached at their lower ends to the said drums, substantially as specified.

6. In a stage, the combination, with the supporting-hooks having pulleys attached thereto and the plank-supporting frames having pulleys attached thereto, of the drums mounted on the said frames, the gear-wheels R, meshing with gear-teeth on the flanges of the drums, the ratchet-wheels carried by the said gear-wheels, the pawls mounted on the frames and engaging the said ratchet-wheels, the crank-arms connected to the gear-wheels, and the ropes K, attached to the drum and passing around the said pulleys, substantially as specified.

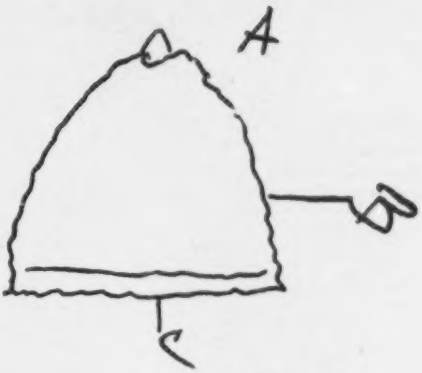
In testimony that we claim the foregoing as our own we have hereto affixed our signatures in presence of two witnesses.

CHARLES D. BOWYER.
WILLIAM H. CASPERSON.

Witnesses:
ROBT. S. TURTON,
CHAS. L. REEVES.

(Here follow diagrams marked pp.188,190 & 192)

DEFENDANT'S EXHIBIT F



712

New York Scaffolding Co.

Liebel-Bunnay Const. Co.

} Ft. 188.

No. 673,384. Patented May 7, 1901.

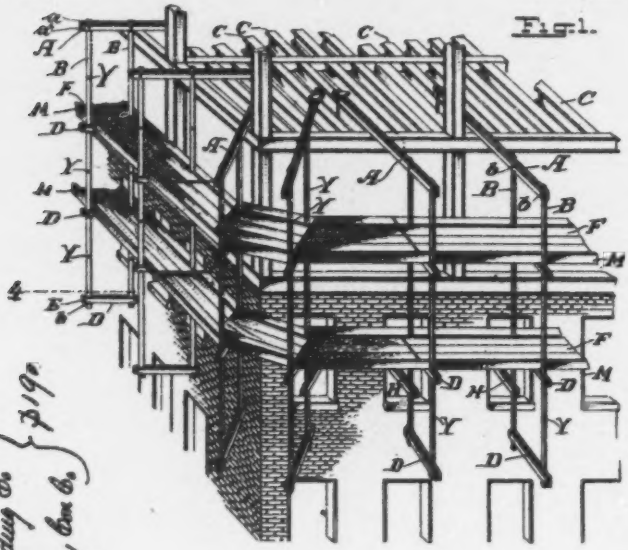
C. J. CLARK.

MASON'S PLATFORM FOR BUILDINGS.

(Application filed Nov. 15, 1900.)

(No Model.) 2 Sheets—Sheet 1.

Fig. 1.



7/2.
Mfg. Scaffolding Co.
v.
Liebel-Bonney Con. Co.
5/19

Fig. 3

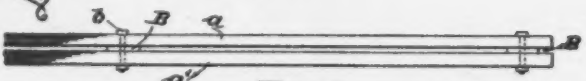
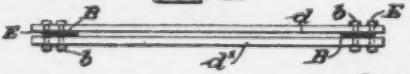


Fig. 4.



WITNESSES:

F. N. Zachrisch

W. A. Barrigan Jr.

INVENTOR,

Charles J. Clark,

BY

Cutler, Butler, Shaffield & Hall
ATTORNEYS.

192

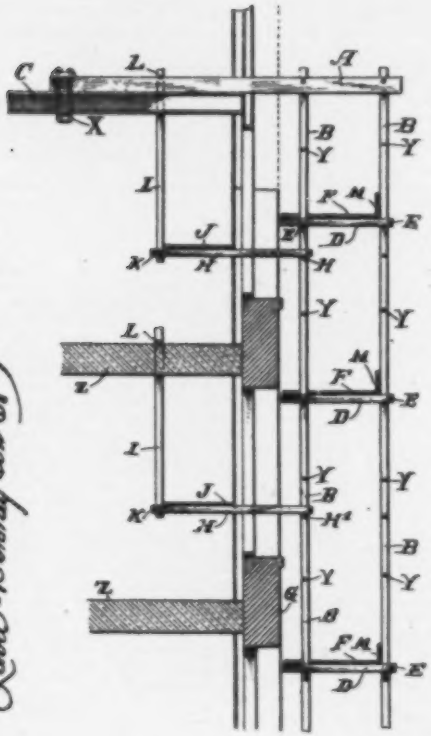
No. 673,384. Patented May 7, 1901.

C. J. CLARK.

MASON'S PLATFORM FOR BUILDINGS.

(No Model.) 2 Sheets—Sheet 2.

Fig. 2.



7/12.
N.Y. Scaffolding Co.
v.
Liebl-Bommer Box Co.
$192.

WITNESSES:
F. N. Koehnrich
D. H. Berrigan Jr.

INVENTOR
Charles J. Clark,
BY
Betts, Betts, Hyslop & Betts
ATTORNEYS.

UNITED STATES PATENT OFFICE.

CHARLES J CLARK, OF NEW YORK, N. Y.

MASON'S PLATFORM FOR BUILDINGS.

SPECIFICATION forming part of Letters Patent No. 675,384, dated May 7, 1901.

Application filed November 15, 1900. Serial No. 36,558. (No model.)

To all whom it may concern:

Be it known that I, CHARLES J. CLARK, a citizen of the United States, residing in the borough of Manhattan, in the city, county, and State of New York, have invented certain new and useful Improvements in Masons' Platforms for Buildings, of which the following is a full and true description, reference being had to the accompanying drawings, showing a construction embodying my invention.

My invention relates to masons' platforms, and has for its object to provide a suspended platform of great strength which may be easily and quickly constructed and adjusted and which has many advantages when compared with the prior forms of platforms.

Prior to my invention so far as I am aware it has been the usual practice in building masons' platforms to build a framework at each floor within the house and to secure to the framework by nails, cleats, or otherwise beams extending outwardly and to place a temporary platform upon the beams outside of the building. In order to allow the masons to continue working up the building, it was necessary to build a framework at each floor and to have beams extend outwardly from each floor, thus requiring the employment of a large quantity of lumber and being very costly. As one result of this system also it was necessary to build the brickwork around the projecting beams, and when the beams had been withdrawn large openings were left in the walls, and to subsequently fill those openings cost considerable time and money. It was also necessary for the masons to build auxiliary platforms resting upon the main platforms, supporting the same upon movable frames or "horses." This resulted in a further cost and delayed the work.

By the employment of my new platform I render the inside supporting-frames unnecessary and use but a single set of outrigging-beams for a plurality of independently-adjustable platforms, keeping the beams always above the work (there being no openings to be subsequently filled in the walls) and the several platforms or the entire frame being adapted to be quickly raised, lowered, taken apart, or assembled.

Referring to the accompanying drawings, Figure 1 shows several of my platforms secured to a building in course of erection. Fig. 2 is a sectional view of the building, showing the manner of securing a platform in place. Fig. 3 is a top view of parts of the outriggers, showing manner of securing the depending bars; and Fig. 4 is a top view on line 4 of Fig. 1 of a put-lock for holding the bars in place and supporting a platform.

The new structure is composed, essentially, of outriggers A, depending bars B, secured to and spaced apart by the outriggers, and of put-locks D, bolted to and giving rigidity to the bars B and adapted to support the movable platforms.

The outriggers may with safety and economy be constructed, as shown, of two beams *a a'*, laid on edge and secured at their inner ends to the building—say to the floor-beams C—by means of clamps or yokes X, (see Fig. 2,) and the depending bars B can be secured to the outriggers by means of bolts or pins *b*, passing through openings in the outriggers and in the bars.

The bars B (which may be in continuous lengths or bolted together in sections) are provided with openings Y at various points throughout their length, and the put-locks D are secured to the bars by bolts or pins fitted in the openings of the bars underneath the put-locks and by bolts E or other devices at the ends of the put-locks and outside of the bars. By this arrangement the put-locks may be quickly and readily raised without moving the bars, while the outer fastenings E prevent shifting of the put-locks and impart rigidity to the structure. As shown, the put-locks D are made up of two short beams *d* and *d'*; but any other form may be used.

The working platforms may be made up of loose boards F, resting upon the put-locks, and, as shown in the drawings, two or more platforms may be suspended simultaneously from the outriggers. Laborers may therefore be engaged in building the upper platform while the masons are at work on the lower or intermediate stage, and each platform may be shifted along its supporting-bars independently of another platform, and when work is completed at one platform the platform may be quickly taken apart without disturbing the masons at work above it. The upper platform serves as a protection for

the masons below it against falling pieces of iron, tools, or hot rivets when the riggers and framers are at work on the higher floors. My new construction also permits the workmen to continue during windy and wet weather. The upper platform will protect the men from rain and snow, and they may be protected from the wind by securing strips of canvas outside of the rods.

The inner ends of the put-locks D rest against the building G and assist in bracing the suspended structure, while any suitable means may be availed of to prevent the structure swinging away from the building. For this purpose, however, I prefer to use one or more inner frames made up of iron bars H and I, the bars H supporting inner platforms J, which may be used by masons, lathers, or other workmen. The bars are secured at their upper ends by bolts L to floor-beams, and the rod H is held to the bar I and the inner bar B by bolts or pins in substantially the same way that the put-locks are supported by the bars B. The rods H are arranged to project from the building at the places where windows are to be located.

In order to prevent bricks, &c., falling from the platforms, the boards M are set on edge against the outer bars B.

As before stated, with the prior forms of platforms it was necessary to build auxiliary platforms upon frames or horses resting on the main platforms. By my construction, however, the masons can raise the platform as desired and without the use of auxiliary frames or horses.

The arrangement and combination of parts described by me and shown in the drawings is preferred by me and has been found highly useful; but other forms and arrangements may be employed without departing from my invention.

What I claim, and desire to secure, is—

1. The combination, in a mason's platform, of a pair of outriggers spaced apart and secured at their inner ends to the beams of a building, with bars, outside of the building, suspended from and secured in pairs to each of the outriggers, each pair of bars being spaced apart by one or more supports fitted thereto by means which permit the supports to be secured at different points along the bars, and a platform fitted between the suspended frames and resting upon the movable supports, substantially as and for the purpose described.

2. The combination, in a mason's platform, of a pair of outriggers spaced apart and secured at their inner ends to the beams of a building, with bars, outside of the building, suspended from and secured in pairs to each of the outriggers, each pair of bars being spaced apart by suitable means, and a platform fitted between the suspended frames by means which permit it to be secured to the bars at different points along their heights, substantially as and for the purpose described.

3. The combination, in a mason's platform, of a pair of outriggers spaced apart and secured at their inner ends to the beams of a building, with bars, outside of the building, suspended from and secured in pairs to each of the outriggers, each pair of bars being spaced apart by suitable means, and a plurality of platforms fitted between the suspended frames by means which permit each platform to be independently secured to the bars at different points along their heights, substantially as and for the purpose described.

4. The combination, in a mason's platform, of a pair of outriggers spaced apart and secured at their inner ends to the beams of a building, with a rectangular frame suspended from each of the outriggers, one or more supports fitted between the bars of each frame by means which permit the supports to be secured at different points along the bars, and a platform fitted between the suspended frames and resting upon the movable supports; substantially as and for the purpose described.

5. The combination, in a mason's platform, of a pair of outriggers spaced apart and secured at their inner ends to the beams of a building, with a rectangular frame suspended from each of the outriggers, and a platform fitted between the suspended frames by means which permit it to be secured to the bars of both frames at different points along their heights, substantially as and for the purpose described.

6. The combination, in a mason's platform, of a pair of outriggers spaced apart and secured at their inner ends to the beams of a building, with bars, outside of the building, suspended from and secured in pairs to each of the outriggers, all of said bars being provided with openings at different points along their heights, each pair of bars being spaced apart by put-locks fitting between the opposite bars and having ends which embrace the bars, bolts for securing the put-locks to the bars and passing through openings in said bars, and a platform fitted between the suspended frames and resting upon the put-locks, substantially as and for the purpose described.

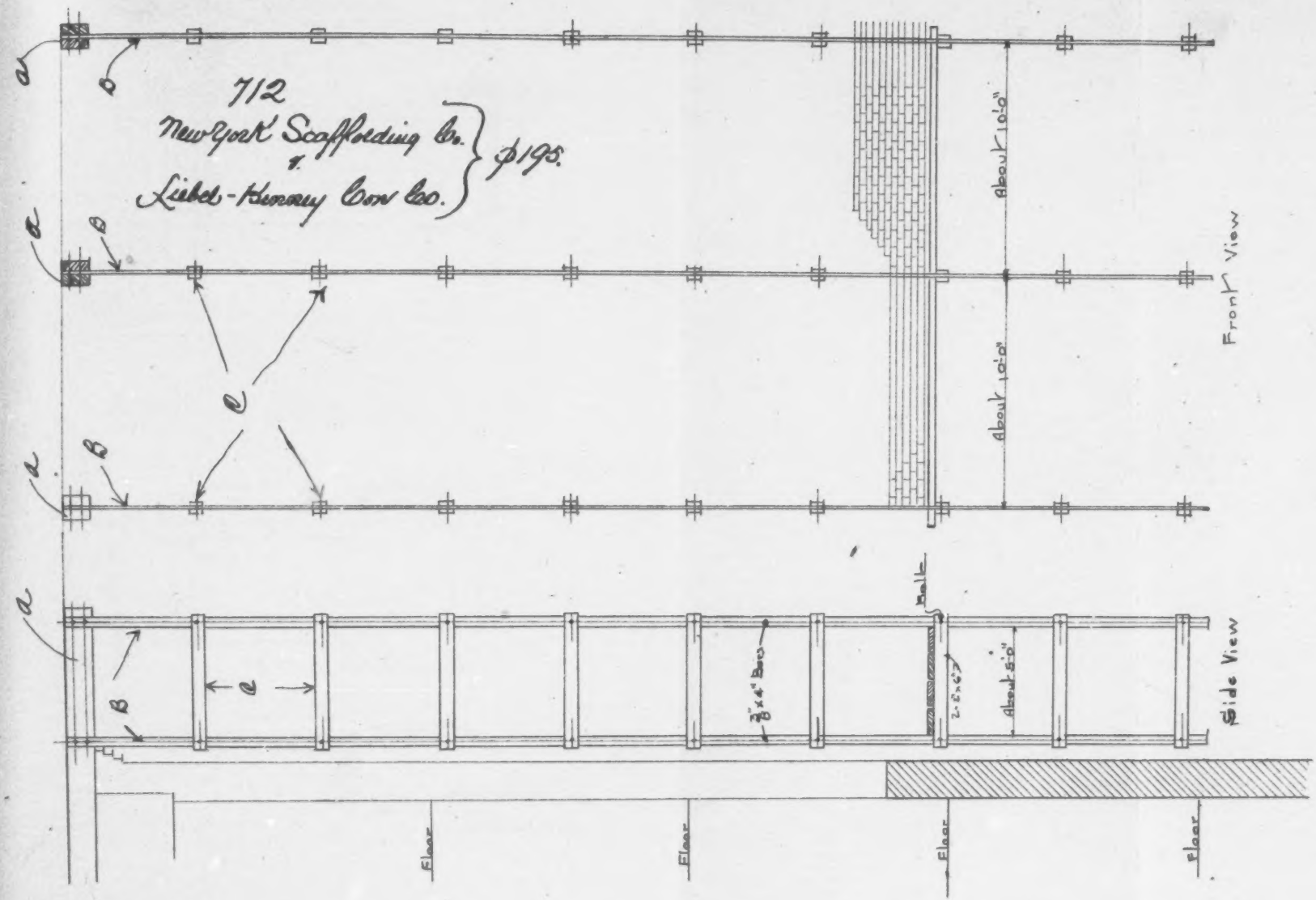
In witness whereof I have hereunto signed my name this 8th day of November, 1900.

CHAS. J. CLARK.

In presence of—
W. E. KINGMAN,
WM. H. BERRIGAN, Jr.

(Here follow diagrams marked pp.I95,I97 & I99)

Defendant's Exhibit H.



No. 796,807. PATENTED AUG. 8, 1905.

M. CAVANAGH.

SCAFFOLD SUPPORT.

APPLICATION FILED NOV. 22, 1904.

2 SHEETS—SHEET 1.

Fig. 1.

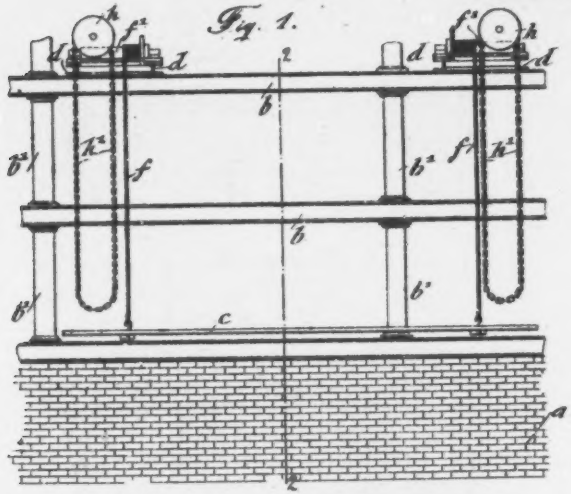
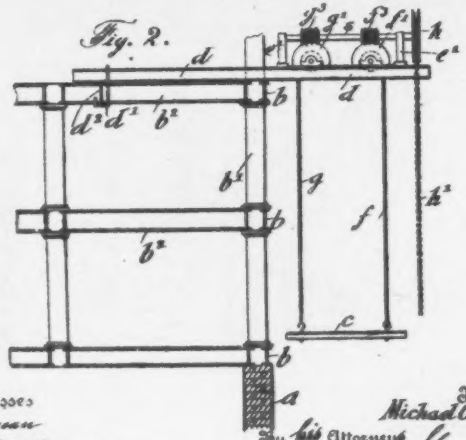


Fig. 2.



712
Pat. Scaffolding Co
v.
Lidle, Bonney & Co. &c
P. 197

Witnesses
C. Bergman
H. R. Baker

Inventor
Michael Cavanagh
By his Attorneys
Howson & Sons

No. 796,807. PATENTED AUG. 8, 1905.

M. CAVANAGH.

SCAFFOLD SUPPORT.

APPLICATION FILED NOV. 23, 1904.

2 SHEETS—SHEET 2.

Fig. 3.

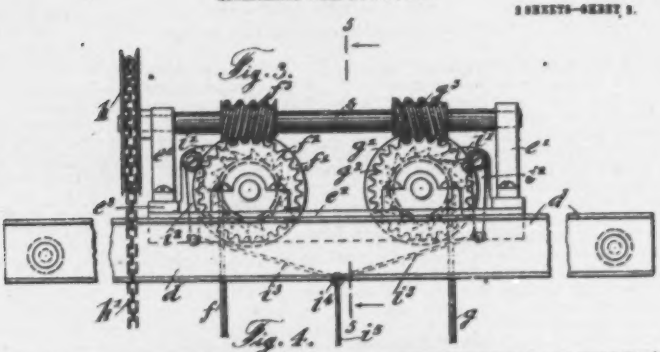


Fig. 4.

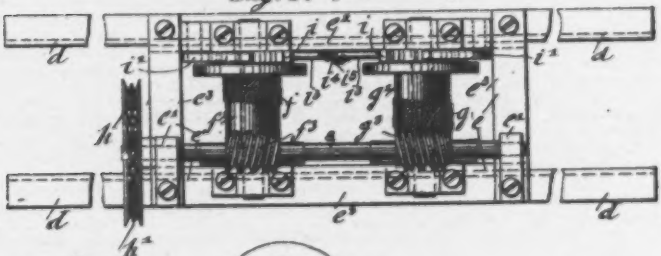
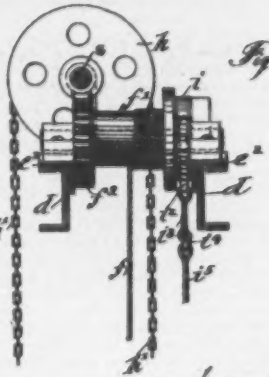


Fig. 5.



712

Wm. Scaffolding Co.
v.
Libbe-Bunny Mfg. Co. } 5,199

Witnesses
H. Engman
W. Baldwin

Inventor
Michael Cavanagh
By his Attorneys
Lyon & Lyon

UNITED STATES PATENT OFFICE.

MICHAEL CAVANAGH, OF NEW YORK, N. Y.

SCAFFOLD-SUPPORT.

No. 796,807. Specification of Letters Patent. Patented Aug. 8, 1905.

Application filed November 22, 1904. Serial No. 233,811.

To all whom it may concern:

Be it known that I, MICHAEL CAVANAGH, a citizen of the United States, residing in New York, borough of Brooklyn, in the State of New York, have invented certain new and useful Improvements in Scaffold-Supports, of which the following is a specification

This invention relates to certain improvements in the scaffold-support for which Letters Patent were granted to William J. Murray on September 6, 1904, No. 769,395, said improvements being designed with a view of remedying some of the defects of the scaffold-support referred to and to permit the quicker and more effective operation of the same when raising or lowering the scaffold; and for this purpose the invention consists in the novel features and combinations of parts, which will be fully described hereinafter and finally pointed out in the claim.

In the accompanying drawings, Figure 1 is a front view of a part of the wall of a building, showing my improved scaffold-support suspended from the steel or iron frame of the building. Fig. 2 is a vertical transverse section on line 2 2, Fig. 1. Fig. 3 is a side view of one of my improved scaffold-supports. Fig. 4 is a plan view of Fig. 3; and Fig. 5 is a vertical transverse section of said scaffold-support on line 5 5, Fig. 3.

Similar letters of reference indicate corresponding parts.

Referring to the drawings, *a* designates a portion of a wall of a building, which wall is built around and incloses the usual steel or iron framework composed of horizontally-arranged beams *b* and vertical columns or supports *b'*. The framework of the building is also provided with horizontally-arranged beams *b²*, which are placed at right angles to the front beams *b*, as shown in Fig. 2. As the wall is raised and the erection of the building progresses, it is necessary to supply the material for the surrounding and partition walls, for which purpose it is customary to provide a scaffold *c*, which has to be raised as the wall is raised and the erection of the building gradually continued. The scaffold *c* is supported at either end by means of ropes *f g*, which are attached at their lower ends by means of eyes to hooks on the scaffold and which are wound up on two parallel drums *f' g'*, that are supported on a horizontal frame which comprises two parallel beams *d*, that are placed transversely to the wall beam or beams *b* and extend sufficiently forward from the same so as to permit the free raising and lowering of the scaffold *c*, suspended from the ropes. The inner ends of the beams *d* are attached to the supplemental transverse beams *d²* of the framework of the building by means of locking-yokes or other locking devices *d'*, so as to be firmly held in position thereon. The beams *d* are preferably arranged in pairs, as shown in Figs. 1 and 4, and serve for supporting the framework *e*, on which the journal-bearings of the parallel drums *f' g'* are supported. The frame is made in the form of parallel side angle-irons *e'* and transverse connecting members *e²*, said angle-irons resting on the beams *d* of the framework and being attached thereto in any suitable manner, so as to prevent their shifting on the supporting-beams. To the angular side rails of the frame *e* are attached the journal-bearings for the shafts of the drums *f' g'*, which drums are provided at one end with worm-gears *f³ g³*, which mesh, respectively, with right and left hand worms *f⁴ g⁴* of a worm-shaft *s*, which is supported in bearings at the upper ends of upright supports *d'*, as shown clearly in Figs. 3 and 4. An actuating device for said worm-shaft is operative from the scaffold to turn the shaft in either direction for raising or lowering the scaffold. The actuating device shown for this purpose will now be described. To the end of the worm-shaft *s* is attached a sprocket-wheel *h*, over which is passed an endless sprocket-chain *h'*, which is of sufficient length to extend in downward direction nearly to the scaffold *c*. Separate locks are provided for each drum to render the scaffold safe in case the thread of either worm should become worn or for any reason be disengaged from its worm-gear. This is important, because the disengagement of the worm-gearing for either drum would precipitate the occupant of the scaffold to earth. For convenience in operation and to avoid a multiplicity of parts a releasing device common to both said locks is operative from the scaffold. By such means the operator on the scaffold may release both locks with one hand and raise or lower the scaffold with the other. The opposite ends of the drums *f' g'* are provided with ratchet-wheels *i*, the teeth of which extend in opposite directions and which are engaged by pawls *j*, that are pivoted to upright supports on the framework . . said pawls being provided with downwardly-ex-

tending arms s^3, which are connected at their lower ends by ropes or other flexible connections s^4 with the connecting ring or link s^5 of a rope or similar connection s^6, that extends in downward direction to the scaffold, so as to be conveniently taken hold of by the man on the scaffold whenever it is desired to release the pawls or drop the same for locking the drums.

By operating the sprocket-wheel chain the worm-shaft is turned and the drums rotated in opposite direction to each other by the worm-gear transmission. The suspension-ropes *f* and *g* on which the scaffold is suspended are wound upon the drums in opposite directions, one rope, *f*, being attached to one end of the drum, while the rope *g* is attached to the opposite end of the drum, so that the strain exerted by the suspension-ropes on the drums, being in opposite direction, balance each other and produce thereby the even winding of the ropes on the drums, the ropes extending in downward direction at the outer circumference of the drums, so as to provide the distance required by them for suspending the scaffold without the necessity of any guide-pulleys for one or both suspension-ropes.

The scaffold can be raised and instantly stopped at any desired point owing to the well-known locking action on the motion-transmitting worm-gears. While the scaffold is raised by the worm-gear mechanism described the drums are turned toward each other, while the pawls pass over the teeth of the ratchet-wheel and are always held in locking engagement with the same, so that no danger of any slipping of the suspension-ropes under the weight placed on the scaffold is possible, the ratchet-wheel and pawl mechanism serving as an auxiliary safety-guard for the locking action of the worm-gear transmission. When the scaffold is to be lowered, the pawls have to be released from the teeth, so as to permit the downward motion. For this purpose the rope s^6 is pulled, which lifts the pawls and withdraws them from the teeth of the ratchet-wheels. The pawls are held out of engagement with the ratchet-wheels by the rope until the lowering motion is completed, when they are permitted to drop again into engagement with the teeth of the ratchet-wheels. The scaffold-support is moved to the points required on the steel or iron framework of the building to be erected and also for the higher stories of the building as the erection of the same progresses.

The advantages of my improved scaffold-support are, first, that the construction is considerably simplified; second, that the speed at which the scaffold can be raised or lowered is considerably increased; third, that the perfect safety and reliability of the scaffold is obtained owing to the combined action of the worm-gear and pawl-and-ratchet mechanism; fourth, that the suspension-ropes being arranged at the outside of the drums and wound up in diagonally opposite directions on the same prevent any uneven strain on the drums and produce the even winding on and unwinding of the suspension-ropes from the drums.

Having thus described my invention, I claim as new and desire to secure by Letters Patent—

A scaffold-support comprising a frame, winding-drums supported thereby parallel to each other, suspension-ropes wound and unwound from said drums and adapted for connection with opposite ends of the scaffold, worm-gears in fixed relation to said drums, a worm-shaft supported on said frame and provided with worms engaging said worm-gears respectively, means operative from the scaffold to turn said shaft in either direction for raising or lowering said scaffold, separate auxiliary safety-locks for the respective drums, and a releasing device common to said locks and operative from the scaffold.

In testimony that I claim the foregoing as my invention I have signed my name in presence of two subscribing witnesses.

MICHAEL CAVANAGH.

Witnesses:
PAUL GOEPEL,
HENRY J. SUHRBIER.

(Here follows diagram marked p.203)

No. 882,206. PATENTED MAR. 17, 1908.

W. J. MURRAY.

SCAFFOLD

APPLICATION FILED JUNE 3, 1907.

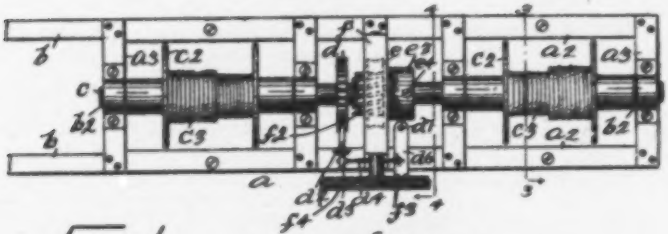


Fig. 1.

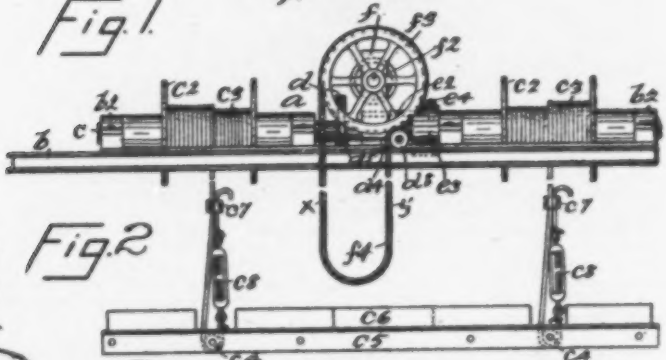


Fig. 2

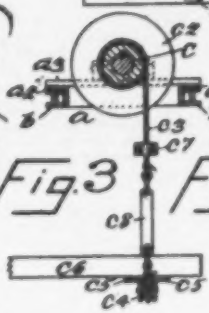


Fig. 3

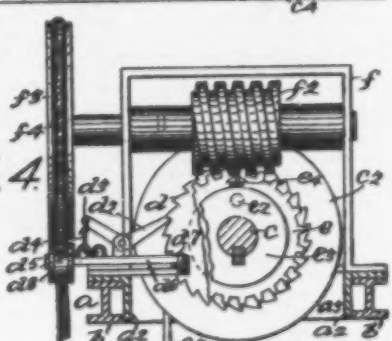


Fig. 4.

N. Y. Scaffolding Co. v. Liebl-Binney Co. 1908

Witnesses:
Adam Bee
H. Hoffman.

Inventor
William J. Murray
By Attorney

UNITED STATES PATENT OFFICE.

WILLIAM J. MURRAY, OF NEW YORK, N. Y.

SCAFFOLD.

No. 882,906. Specification of Letters Patent. Patented March 17, 1908.

Application filed June 3, 1907. Serial No. 377,861.

To all whom it may concern:

Be it known that I, WILLIAM J. MURRAY, a citizen of the United States of America, and residing at New York, in the county of New York and State of New York, have invented certain new and useful Improvements in Scaffolds, of which the following is a specification, such as will enable those skilled in the art to which it appertains to make and use the same.

This invention relates to swinging scaffolds and the object thereof is to provide a scaffold of this class which may be raised or lowered from the platform thereof; a further object being to provide such a scaffold which is always securely locked in any position but which permits of unlocking in order to lower the platform and a still further object being to provide means in such a scaffold of adjusting the suspending cables individually to level the platform.

My invention is fully described in the following specification, of which the accompanying drawings form a part, in which the separate parts are designated by the same reference characters in each of the views, and in which:—

Figure 1 is a plan view of the overhead support for one end of my scaffold; Fig. 2 is an end view of the entire scaffold; Fig. 3 is a section taken on the line 3—3 of Fig. 1; and Fig. 4 is an enlarged section taken on the line 4—4 of Fig. 1.

In the drawings forming a part of this application, I have shown a frame *a* composed of angle iron side members a^1 and end members a^2 and, as clearly shown, the frame *a* rests upon two outriggers *b* projecting from the building to which my scaffold is to be connected.

Mounted in bearings b^1 is a shaft *c* upon which are secured two drums c^1 upon which are wound the supporting cables c^2 and which pass around, at their lower ends, sheaves c^3 mounted between two transversely arranged angle irons c^4 which form the support for the scaffold planking c^5 and the ends of the cables c^2 are thence carried upwardly and adjustably secured to the standing part of the cables by means of clamps c^7 and between these clamps and sheaves I provide turn-buckles c^8 by means of which the platform of the scaffold may be leveled.

Secured upon the shaft *c*, adjacent the center thereof, is a ratchet-wheel *d* and pivoted to the frame *a* and coöperating with the wheel *d* is a pawl d^2 provided with an arm d^3 and to which is secured a cord d^4 passing through a guide d^5 and thence to a lever d^6 pivoted at d^7 and to which it is secured and the lever d^6 carries a roller or sheave d^8 at its outer end.

Rotatably mounted upon the shaft *c* is a worm-gear *e* into which projects a rod e^2 mounted upon a sliding collar e^3 keyed to the shaft *c* to prevent rotation thereon and a screw e^4 locks the collar e^3 in position and it will be seen from this construction that, with the collar in its locked position, rotation thereof also rotates the worm-gear *e* but when the collar is moved away from the worm-gear engagement therewith ceases and the said worm-gear may then rotate independently of the shaft *c*.

Carried in a suitable frame *f* mounted upon the frame *a* is a worm f^1 provided with a pulley f^2 and over which passes an endless rope f^4 which reaches the platform of the scaffold and by hauling upon one side of the pulley the said platform may be raised and the other or free side of the rope f^4 passes over the roller d^8 which carries the said rope inwardly as shown in Fig. 2.

It will be seen from the foregoing description that when the scaffold is in position if the rope f^4 be hauled upon at that side of the pulley f^2 marked *z* the platform is raised by means of the worm-gears rotation and consequent rotation of the shaft *c* and drums c^1 and the pawl d^2 locks the scaffold in any desired position, but if strain be placed upon the rope *z* and then strain be placed upon the rope *y* the roller d^8 moving back draws the pawl d^2 away from the ratchet wheel *d* and the platform may then be lowered until the strain upon the rope *y* is removed at which time the pawl again becomes operative upon the ratchet and the platform is again locked.

When rigging or unrigging the scaffold it is desirable to rotate the drums more rapidly than through the medium of the worm and worm-gear and if the collar e^3 be drawn out of engagement with the worm-gear free rotation of the drums results and much time is saved.

While the pawl d^2 is shown as gravity operated it will be understood that springs may be used to force it into engagement with the ratchet and various other changes in and modifications of the form of construction

shown and described may be made within the scope of the following claims and. with this reservation,

What I claim as new and desire to secure by Letters Patent, is:—

1. A scaffold, comprising overhead drums, a platform, cables dependent from said drums to said platform, means operative from the platform for rotating said drums and thereby moving said platform, locks for said drums and devices operated by said means for unlocking said drums.

2. A scaffold, comprising a platform, overhead drums, locks for said drums, cables on said drums and secured to said platform, drum operating devices operative from said platform, means for making said devices inoperative and means connected with said devices for unlocking said drums.

3. A scaffold, comprising a platform, overhead drums, cables thereon and secured to said platform, a lock for said drums, a worm and worm-gear in operative connection with said drums, an endless rope for rotating said worm and means operative by said rope for making said lock inoperative.

4. A scaffold, comprising a platform, overhead drums, cables thereon and secured to said platform, a lock for said drums, an endless rope operative from said platform for rotating said drums and means operated by said rope for unlocking said drums.

5. A scaffold, comprising a platform, devices for moving said platform vertically, operating means for said devices and a lock for said devices, said operating means raising said platform when operated in one direction and releasing said lock and lowering said platform when operated in the opposite direction.

In testimony that I claim the foregoing as my invention I have signed my name in presence of the subscribing witnesses this 31st day of May 1907.

WILLIAM J. MURRAY.

Witnesses:
ADAM BEE,
H. MOTTLAW.

206 United States Circuit Court of Appeals for the Third Circuit.

NEW YORK SCAFFOLDING COMPANY, Plaintiff-Appellant,

vs.

LIEBEL-BINNEY CONSTRUCTION COMPANY, Defendant-Appellee.

Additional Transcript of Record.

Murray Patent No. 854,959, of May 28, 1907, and Files of Henderson Patent in Suit.

207 United States Patent Office.

Department of the Interior,

United States Patent Office.

To all whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the Records of this Office of the File Wrapper and Contents in the matter of the Letters Patent of Elias H. Henderson, Number 959,008 Granted May 24, 1910, for Improvement in Scaffold-Supporting Means.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington, this 25th day of November, in the year of our Lord one thousand nine hundred and twelve and of the Independence of the United States of America the one hundred and thirty-seventh.

[SEAL.] F. A. TENNANT,
Acting Commissioner of Patents.

208 2-437.

Div. 29.

Number (Series of 1900).			
503,053	1909	(Ex'r's Book).	267-8

Patent No. 959008.
Name: Elias H. Henderson, of Chicago.
County of ——.
State of Illinois.
Invention: Scaffold Supporting Means.

	Original.	Renewed.
Petition	June 19, 1909	—— —, 190–.
Affidavit	" " 1909	—— —, 190–.
Specification	" " 1909	—— —, 190–.
Drawing 2 sheets	" " 1909	—— —, 190–.
Model of Specimen	" " 1909	—— —, 190–.
First Fee Cash $15	" " 1909	—— —, 190–.
First Fee Cert.	1909	—— —, 190–.
Appl. filed complete	" " 1909	—— —, 190–.

Examined Ballard N. Morris, April 1st, 1910.
Ballard N. Morris, April 25, 1910.
Countersigned W. W. Mortimer, For Commissioner. W. W. Mortimer, For Commissioner.

Notice of Allowance (Withdrawn) April 27, 1910.
Final Fee Cash $20— April 18, 1910 , 190
Final Fee Cert. , 191 , 190
Patented May 24 , 1910.
Associate Attorney

Attorney- Brown and Williams
1550 Monadnock Bldg.
Chicago, Ill.

209 Mail Room,
Jun- 19, 1909,
U. S. Patent Office.

Serial No. 503,053, Paper No. 1.

Application.

Petition.

To the Commissioner of Patents:

Your petitioner, Elias H. Henderson, a citizen of the *the* United States, residing at Chicago, in the County of Cook and State of Illinois, Post-office address, 5017 Fifth Avenue, Chicago, Illinois, prays that Letters Patent may be granted to him for the new and improved Scaffold Supporting Means (Case 2) set forth in the annexed specification; and he hereby appoints Charles A. Brown and Lynn A. Williams, of the copartnership of Brown & Williams (Reg. No. 8461), of 1550 Monadnock Building, Chicago, Illinois, his attorneys, with full power of substitution and revocation, to prosecute this ap-

plication, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

ELIAS H. HENDERSON.

To All Whom It May Concern:

Be it known that I, Elias H. Henderson, a citizen of the United States, residing at Chicago, in the County of Cook and State of Illinois, have invented certain new and improved Scaffold-Supporting Means, of which the following is a full, clear, concise and exact description, reference being had to the accompanying drawings forming a part of this specification.

My invention relates to an improved means for supporting scaffolds used in connection with the construction of buildings and their repair. Scaffolds for this purpose are preferably of the swinging type supported by cables from outriggers temporarily
210 secured to the upper part of the building.

It has been the practice in the past to associate hoisting means with the cables at the outriggers, and in some cases it has been proposed to use such hoisting means in connection with the cables on the scaffold to adjust the height as required in connection with the work.

My invention relates to an improved form of hoisting mechanism carried by the scaffold for securing the same to the cables, the upper ends of which are connected to outriggers, generally, temporary in character, secured to the upper portion of the building. It is an object of my invention to construct such a hoisting mechanism in such a manner that it results in a maximum degree of security and a minimum cost of production.

The several drawings illustrating my invention are as follows:

Figure 1 is a perspective view of the framework of a building showing my scaffold supporting means in place upon a scaffold.

Figure 2 is an enlarged side view of a portion of the scaffold shown in Figure 1.

Figure 3 is a top view of a modified form of scaffold narrower than the scaffold shown in figure 1.

Figure 4 is a side view of the scaffold shown in Figure 3.

Figure 5 is a side view of the hoisting mechanism used in connection with each supporting cable.

Figure 6 is a face view of the mechanism shown in figure 5.

Similar numerals refer to similar parts throughout the several views.

As shown in Figure 1, the framework 1 of the building
211 supports at its upper portion a plurality of outriggers 2, from the overhanging portions of which cables 3 depend. Each of these cables 3 is connected at its lower end to a hoisting mechanism 4, which together serve to support the scaffold 5.

As indicated in figure 2, the frame 6 of each hoisting mechanism

is so formed as to pass around the end of a cross piece 7 used to support the platform 8 of the scaffold 5.

The detail construction of each hoisting mechanism is more clearly shown by reference to figures 5 and 6. Each of such mechanisms consists of a frame 6, preferably of bar iron, bent into the shape of a U, and when so formed adapted to pass around and support one end of one of the cross pieces 7 referred to above. The upwardly extending ends of the frame 6 have extending between them a round bar 9 which forms the support for a drum 10 used to receive the cable 3, the end of which is secured to the drum by means of a cable clamp 11. The drum 10 carries at its right-hand end, as shown in figure 5, a gear 12 which meshes with a pinion 13 secured to the shaft 14, which is revolvably supported in the upwardly extending ends of the frame 6. The shaft 14 *to* squared at its ends to be engaged by cranks 15 at either or both of such ends, as desired, for the purpose of rotating the shaft 14 and the drum 10. The upper ends of the frame 6 are held in proper relative position by means of a bolt 16, upon which are secured collars 17 to properly space the ends of the frame 6. The bolt 16 rotatably supports a locking pawl 18 adapted to engage the gear 12 carried by the drum 10 for the purpose of holding such drum positively in any position to which it may be moved by the operation of the crank 15. A second pawl 19 is indicated as supported by a rod 20 extending between the side members of the frame 6, which pawl, as indi-
212 cated at 19a, is adapted to be engaged by the foot of the person operating the drum to revolve such pawl from engagement with the gear 12 carried by the drum.

The hoisting mechanism just described is also adapted for use in connection with comparatively small scaffolds which are much narrower than the style of scaffold shown in figure 1. In this connection, one hoisting mechanism may be used at each end of the scaffold 21, as shown in figures 3 and 4. In connection with scaffolds of this type, it is generally desirable to locate a supporting timber 22 longitudinally of the scaffold 21 on its under side and substantially under the middle of the scaffold. This timber has placed upon it cross-pieces 23, upon which the floor 24 of the scaffold is laid. The frame 6 of the hoisting mechanisms in this modification are built to pass around the ends of the timber 22 to support the scaffold.

From the above it will be seen that my construction secures the greatest possible amount of security, since the frame 6 passes around the supporting beams of the scaffold in such a way that no auxiliary means are required to secure the hoisting mechanism to the scaffold. Furthermore, the construction is made very simple, and the machines can be cheaply made on account of the small number of parts, and further on account of the single bar constituting the framework of the machine serving also as the bearings and bearing supports for the hoisting mechanism.

While I have shown my invention in the particular embodiment herein described, I do not, however, limit myself to this construc-

tion, but desire to claim any equivalent that will suggest itself to those skilled in the art.

I Claim:—

213 1. A scaffold consisting in the combination of cross beams, floor pieces extending between such beams, and a hoisting device associated with each end of each beam, each hoisting device con-
continuous
Per B. sisting of a ∧ U-shaped metal bar extending around
the under side of
" " ∧ and upward from the associated beam, and a
hoisting
Per A'. ∧ drum rotatably supported by the side members of such bar.

2. A scaffold consisting in the combination of cross beams, floor pieces extending between such beams, and a hoisting device associated with each end of each beam, each hoisting device consisting of a metal bar formed around and extending upward on both sides of the associated beam, a drum supported by the upwardly extending ends of the bar in bearings formed in such bar, such drum adapted to receive a cable for supporting the scaffold, a crank shaft also supported in bearings formed in such bar, and gearing between the drum and the crank shaft.

Canceled per B.

---

3. A scaffold consisting in the combination of cross beams, floor pieces extending between such beams, and a hoisting device associated with each end of each beam, each hoisting device consisting of a metal bar formed around and extending upward on both sides of the associated beam, a drum supported by the upwardly extending ends of the bar in bearings formed in such bar, such drum adapted to receive a cable for supporting the scaffold, a crank shaft also supported in bearings formed in such bar, gearing between the drum and the crank shaft, and a pawl for locking the drum in any desired position, such pawl pivoted to such bar and adapted to be released from the drum by the foot of the operator.

4. Hoisting mechanism for supporting a scaffold consisting in
directly carry and
Per A. 214 the combination of a metal bar bent to ∧ support a beam of the scaffold and its ends ertending upwards, and a drum supported between such upwardly extending ends, such drum adapted to receive a supporting cable of the scaffold.

5. Hoisting mechanism for supporting a scaffold con-
directly carry and
" " sisting in the combination of a metal bar bent to ∧ support a beam of the scaffold and its ends extended upwards, a drum supported between such upwardly extending ends, such drum adapted to receive a supporting cable of the scaffold, a crank shaft also

supported by such upwardly extending ends, and gearing between the drum and crank shaft.

6. Hoisting mechanism for supporting a scaffold consisting in the

Per A. combination of a metal bar bent to directly carry and ∧ support a beam in the scaffold and its ends extended upwards, a drum supported between such upwardly extended ends, such drum adapted to receive a supporting cable of the scaffold, a crank shaft also supported by such upwardly extending ends, gearing between the drum and the crank shaft, and a pawl for locking the drum in any desired position, such pawl adapted to be released from the drum by the foot of the operator.

7. Hoisting mechanism for supporting a scaffold consisting in the

Per A. combination of a metal bar bent to directly carry and ∧ support a beam of the scaffold and its ends extending upwards, a drum supported between such upwardly extending ends, such drum adapted to receive a supporting cable of the scaffold, a crank shaft also supported by such upwardly extending ends, and gearing between the drum and the crank shaft, the upwardly extending ends of such bar constituting the bearings of such drum and crank shaft.

8. Hoisting mechanism for supporting a scaffold consisting in the

Per A. 215 combination of a metal bar bent to directly carry and ∧ support a beam of the scaffold and its ends extended upwards, a drum supported between such upwardly extending ends, such drum adapted to receive a supporting cable of the scaffold, a crank shaft also supported by such upwardly extending ends, gearing between the drum and the crank shaft, the upwardly extending ends of such bar constituting the bearings of such drum and crank shaft, and a gravity pawl for locking the drum in any desired position, such pawl pivoted to such bar and adapted to be released from the drum by the foot of the operator.

Insert A'.>

[Matter enclosed between rules erased in copy.]

In witness whereof, I hereunto subscribe my name this 16th day of June, 1909.

ELIAS H. HENDERSON.

Witnesses:

ALBERT C. BELL.
ROBERT F. BRACKE.

Oath.

STATE OF ILLINOIS,
County of Cook, ss:

Elias H. Henderson, the above-named petitioner, being duly sworn, deposes and says that he is a citizen of the United States, and resident of Chicago, in the County of Cook and State of Illinois, and that he verily believes himself to be the original, first and sole inventor of the new and improved Scaffold Supporting Means (Case 2) set forth and claimed in the annexed specification; that he does not know and does not believe that the same were ever known or used before his invention or discovery thereof; or patented or described in any printed publication in the United States of America or any foreign country before his invention or discovery thereof, or more than two years prior to this application; or in public use or on sale in
216 the United States for more than two years prior to this application, and that no application for foreign patent has been filed by him or his legal representatives or assigns in any foreign country.

[SEAL.] ELIAS H. HENDERSON.

Subscribed and sworn to before me this 16th day of June, 1909.

ALBERT C. BELL,
Notary Public.

503,053.

$15.00 Received Jun- 19, 1909. C. H. H. Chief Clerk, U. S. Patent Office.

Chicago June 15, 1909.

Hon. Commissioner of Patents, Washington, D. C.

SIR: We enclose, herewith, the petition, specification, oath and drawings in the matter of the application of Elias H. Henderson, (Case #2), for Improvement in Scaffold Supporting Means; also our check for $15.00 in payment of the first Government fee.

Yours very truly,

BROWN & WILLIAMS.

217

Department of the Interior,
United States Patent Office,
Washington, D. C., Aug. 31, 1909.
Mailed " " "

Elias H. Henderson, c/o Brown & Williams, 1550 Monadnock Block, Chicago, Ill.:

Please find below a communication from the Examiner in charge of your application for patent for Scaffold Supporting Means; filed June 19, 1909; #503,053.

E. B. MOORE,
Commissioner of Patents.

The following references are cited:

Murray, 854,959; May 28, 1907; (20-82).
Howe, 775,704; Nov. 22, 1904; (227-23).
Bowyer, et al., 382,252; May 1, 1888; (20-82).
Sladek, 607,805; July 19, 1898; (20-82).
Harpin, et al., 763,884; June 28, 1904; (20-82).
Crandall, 797,722; Aug. 22, 1905; (20-82).

None of the claims are seen to present invention over Murray. To arrange this U-shaped frame with the closed end down so as to extend around the cross bar, would be obvious if desired.

As to Claims 3, 6 and 10, the positioning of a pawl so it may be operated by one's foot, does not constitute invention,—see also Sladek, Crandall, Harpin and Bowyer, et al.

F. M. WARD,
Act'g Ex'r, Div. 29.

SOPER.

218

Mail Room,
Nov. 15, 1909,
U. S. Patent Office.

U. S. Patent Office,
Nov. 16, 1909,
Division XXIX.

Serial No. 503,053, Paper No. 3.

A.

United States Patent Office.

Room 147.

Case 2.

Applicant: Elias H. Henderson. Invention: Scaffold Supporting Means. Serial No. 503,053. Filed June 19, 1909.

1550 Monadnock Block,
Chicago, November 11, 1909.

Hon. Commissioner of Patents, Washington, D. C.

Sir: In response to the last Official Action, paper No. 2, applicant amends his above-entitled application as follows:—

Claim 1, line 5, "around" insert *the under side of*.

Claims 4, 5, 6, 7, and 8, line 2, before "support" insert *directly carry and*.

Add the following claim:

A'. 3 [9].* A scaffold consisting of a plurality of U-shaped bars arranged in pairs, a cross beam [lain]* laid in Per B. and extending between each pair of such U-shaped bars, a floor laid upon said cross beam, a drum rotatably supported between the upwardly extending side members of each of said U-shaped bars, and means for controlling the rotation of said drum.

NOTE.—It is considered that each of the claims presented are allowable over the patent to Murray 854,959, the Examiner's prin-
219 cipal citation, and, in fact, any of the other references to which he has incidentally referred.

It is the primary requisite of a device of the class to which this invention relates that it be secure, and all efforts are directed in this behalf. In a chain of parts between a primary support and the scaffold upon which a workman stands a number of connections are necessarily employed, and it follows that the security of the device will vary inversely as the number of members in such a chain. Each connection employed makes another danger point, if such it may be termed, and it is the object of applicant's invention to make a desirable construction, so far as hoisting mechanism is concerned, secure enough to be practical and worthy of confidence. Claim 1 specifies that the U-shaped metal bar extends around the under side of the beam, while the ends thereof extend upwardly. Thus the connection between the U-shaped bar and the cross beam is absolute and positive, and no connecting rivets, bolts or other auxiliary means are employed. Hoisting mechanism is mounted directly between the ends which thus extend from the beam, and the desirable security is thus effectively realized.

Claims 2 and 3 specify that the metal bar is formed around the beam. This is, of course, different from the Murray structure and it is submitted that it merits patent protection. Although claims 4 and 8 as originally filed may be considered in the light of the above argument, it has been thought wise to further specify that the metal bar is bent to directly carry and support the beam.

Favorable consideration is urged.

Respectfully,

ELIAS H. HENDERSON,
By BROWN & WILLIAMS,
Attorneys.

[*Words and figures enclosed in brackets erased in copy.]

220 Department of the Interior,

United States Patent Office,

Washington, D. C., December 14, 1909.
Mailed " " "

Elias H. Henderson, c/o Brown & Williams, 1550 Monadnock B'ld'g, Chicago, Ill.:

Please find below a communication from the Examiner in charge of your application for patent for Scaffold Supporting Means; filed June 19, 1909; #503,053.

E. B. MOORE,
Commissioner of Patents.

In response to amendment of Nov. 15, 1909:

The claims are seen to present mere colorable and mechanical variations over Murray as previously applied. At best they present no invention over Murray in view of Bouyer et al. showing a frame closed at the bottom.

B. N. MORRIS,
Ex'r, Div. 29.

SOPER.

221 Mail Room,
Mar. 7, 1910.

U. S. Patent Office,
Mar. 8, 1910.
Division XXIX.

Serial No. 503,053, Paper No. 5.

B

Mail Room, Mar. 7, 1910.

United States Patent Office.

Room 147.

Case 2.

Applicant: Elias H. Henderson. Invention: Scaffold Supporting Means. Serial No. 503,053. Filed June 19, 1909.

1550 Monadnock Block,

Chicago, March 3, 1910.

Hon. Commissioner of Patents, Washington, D. C.

SIR: In reply to the last Office Action (Paper No. 4) applicant hereby *m*amends as follows:

Claim 1, line 4, after "a" insert *continuous.*

Line 5 before "drum" insert *hoisting.*

Cancel claims 3 to 8 inclusive.
Claim 9, line 2 cancel "lain" and substitute *laid*.
Renumber claim 9 as claim 3.

NOTE—Claim 1 has been revised to more clearly and pointedly bring our the essential feature of the invention consisting of the structure of the windlass frame by which it directly supports the scaffold members and this without resorting to a complicated frame of built up structure but by the use of a frame consisting of a single bar of metal bent so as to support one end of a scaffold member without the need of securing such member thereto.

As a result of an interview had with the Primary Examiner and with the Examiner in charge of this case, it is respectfully
222 asked that claims 2 and 3 be reconsidered since in each is recited the combination of the scaffold, its supporting members and the frames of the windlass in such a manner that the frames comprising bent U-shaped bars serve to support the scaffold directly and without need of fastening *the scaffold directly and without need of fastening the scaffold* supporting members to the windlass. It will be remembered that at the interview mentioned, it was pointed out that the applicant's structure is much simpler, cheaper to make and more effective than any of the structures shown in the references, and further that none of the structures of the prior art are adapted to support the scaffold without either positively securing the windlass frame to the scaffold or using a complicated structure for the windlass frame. It was pointed out that the windlass frame used by the applicant consists of a single bar of metal bent in the form of a U, the bent portion receiving directly and supporting, without the need for securing to it, the supporting members of the scaffold and that the upwardly extending ends of the bent bar received between them and constitute the bearings for the drum of the windlass. It is thought that the claims recite combinations which are in accord with the suggestions made by the Primary Examiner at the interview mentioned and favorable action is therefore requested.

Respectfully,
ELIAS H. HENDERSON,
By BROWN & WILLIAMS,
Attorneys.

223 D. S. Serial No. 503,053.

Department of the Interior,
United States Patent Office,
Washington, April 5, 1910.

Elias H. Henderson, Care Brown & Williams, 1550 Monadnock Bldg., Chicago, Ill.

SIR: Your application for a patent for an Improvement in Scaffold Supporting Means, filed June 19, 1909, has been examined and allowed.

The final fee, twenty dollars, must be paid not later than six months from the date of this present notice of allowance. If the final fee be not paid within that period the patent on this application will be withheld, unless renewed with an additional fee of $15, under the provisions of Section 4897, Revised Statutes.

The office delivers patents upon the day of their date, and on which their term begins to run. The printing, photolithographing, and engrossing of the several patent parts, preparatory to final signing and sealing, will require about four weeks, and such work will not be undertaken until after payment of the necessary fee.

When you send the final fee you will also send, distinctly and plainly written, the name of the inventor and title of invention as above given, date of allowance (which is the date of this circular), date of filing, and, if assigned, the names of the assignees.

If you desire to have the patent issue to assignees, an assignment containing a request to that effect, together with the fee for recording the same, must be filed in this office on or before the date of payment of final fee.

After issue of the patent uncertified copies of the drawings and specifications may be purchased at the price of five cents each.
224 The money should accompany the order. Postage stamps will not be received.

Final fees will not be received from other than the applicant, his assignee or attorney, or a party in interest as shown by the records of the Patent Office.

Respectfully,

E. B. MOORE,
Commissioner of Patents.

$20, Ch., Received Apr. 18, 1910. D. Chief Clerk, U. S. Patent Office.

Chicago, April 15, 1910.

Hon. Commissioner of Patents, Washington, D. C.:

SIR: We enclose herewith our check for $20.00 in payment of the final fee in the matter of the application of Elias H. Henderson for United States Letters Patent for Improvement in Scaffold Supporting Means, Case 2, filed June 19, 1909, Allowed April 5, 1910, Serial No. 503,053.

Respectfully.

BROWN & WILLIAMS.

Enclosure.

225 *Letter No. 6.*

Department of the Interior,
United States Patent Office,
Washington, D. C., April 22, 1910.

To the Commissioner of Patents:

The Commissioner is hereby requested to withdraw application Serial No. 503,053 of Elias H. Henderson from issue for the purpose of interference.

Very respectfully,

BALLARD N. MORRIS,
Examiner, Division 29.

Approved Apr. 22, 1910.

F. A. TENNANT,
Assistant Commissioner.

Case withdrawn from files of Issue and Gazette Division Apr. 22/10.

L. W. W. W. M.

No interference found on full consideration.

B. N. MORRIS.

Apr. 25, '10.

Department of the Interior,
United States Patent Office,
Washington, D. C., April 22, 1910.

Elias H. Henderson, c/o Brown and Williams, Chicago, Ills.

SIR: Your application for patent for an improvement in Scaffold supporting means, serial No. 503,053, allowed April 5, 1910,
226 has been withdrawn from the issue files of this office. The reasons therefor will be communicated to you by the Examiner.

Until a new notice of allowance is sent you the [final fee]* will not be [required].* (Letters Patent issued)

Very respectfully,

E. B. MOORE,
Commissioner of Patents.

[*Words and figures enclosed in brackets erased in copy.]

Department of the Interior,
United States Patent Office,
Washington, April 10, 1910.

Elias H. Henderson, c/o Brown and Williams, Chicago, Ills.:

Patent will issue May 17, 1910.

SIR: You are informed that the final fee of twenty dollars has been received in your application for Improvement in Scaffold supporting means.

Date of receipt April 18, 1910.

Very respectfully,

E. B. MOORE,
Commissioner of Patents.

227

Department of the Interior,
United States Patent Office,
Washington, D. C., April 27, 1910.

Elias H. Henderson, c/o Brown and Williams, Chicago, Ills.

Patent will issue May 24, 1910.

SIR: Your application for patent for an improvement in Scaffold supporting means, filed June 19, 1909, has been examined and allowed.

The final fee, twenty dollars, having been received, the Letters Patent will be forwarded in due course of business.

Additional copies of Specifications and Drawings will be charged for at the following rates: Single copies, uncertified, five cents each. The money should accompany the order.

Very respectfully,

E. B. MOORE,
Commissioner of Patents.

228–9

1909.

Contents.

Print, —.
1. Application papers, O. K. O. K.
2. Rej., Aug. 31, 1909.
3. Amendt. A, Nov. 15, 1909.
4. Rej., Dec. 14, 1909.
5. Amendt. B, Mar. 7, 1910.
6. Letter of withdrawal, April 22, 1910.
7.
8.

9.
10.
11.
12.
13.
14.
15.
16.
17.
18.
19.
20.

Title: Scaffold-Supporting Means.
3 Claims.

Here follow

DIAGRAMS AND SPECIFICATION

Marked pp. 230 to 233, incl.

P 30
No. 854,959

PATENTED MAY 28, 1907

W. J. MURRAY.

ADJUSTABLE SCAFFOLD.

APPLICATION FILED NOV. 12, 1906.

2 SHEETS—SHEET 1

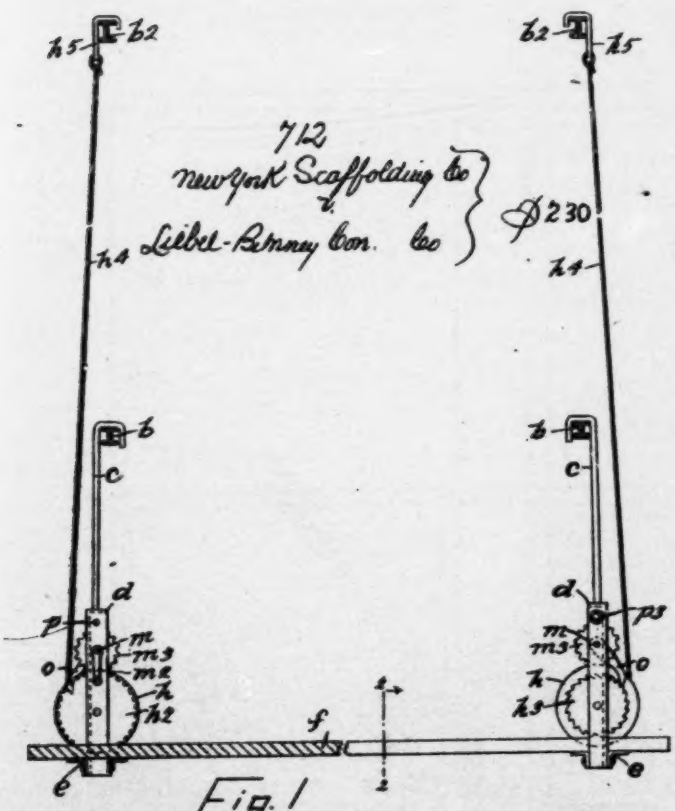


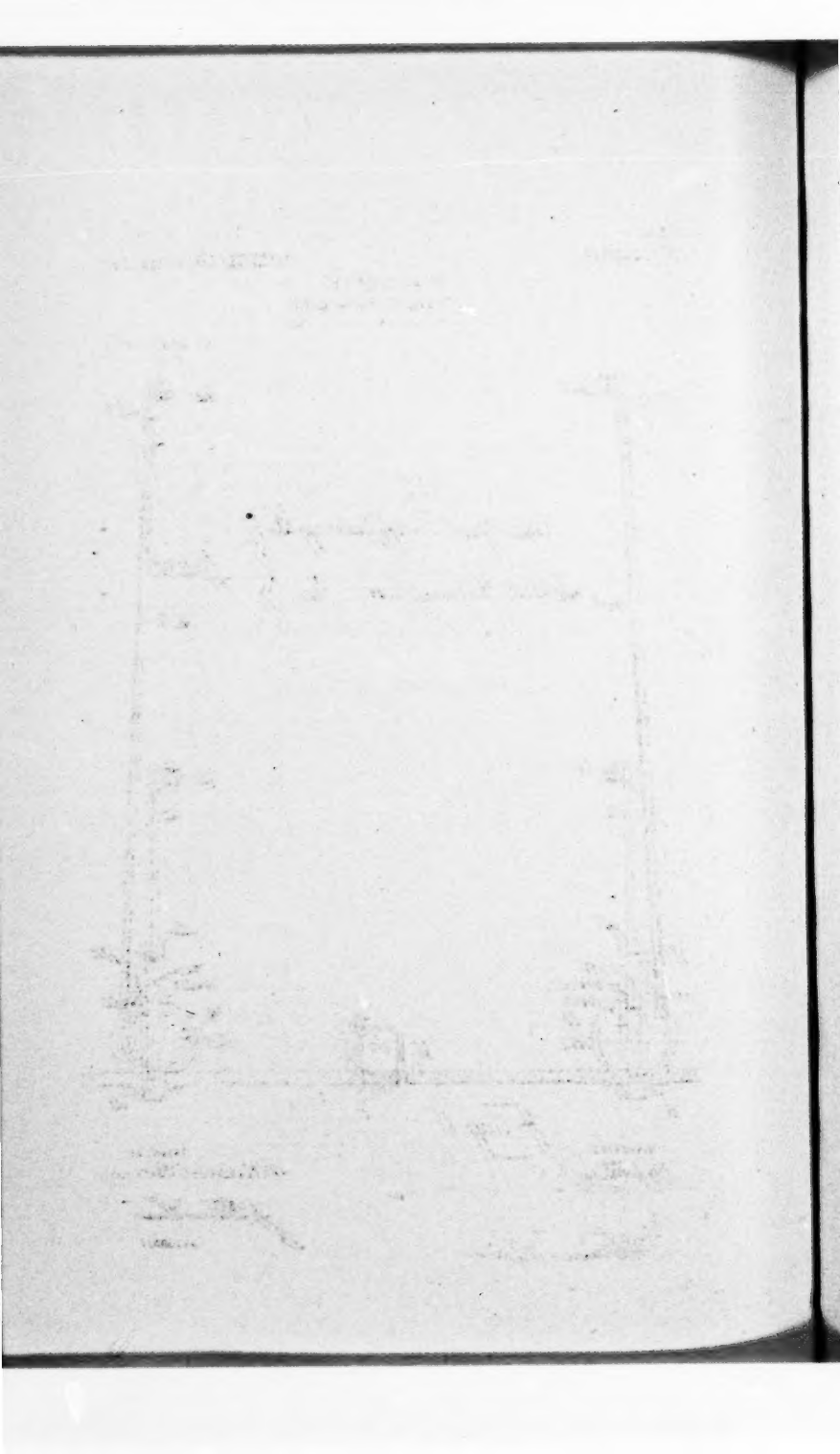
Fig. 1

WITNESSES

INVENTOR
William J. Murray

BY
J. Thos. Lee
ATTORNEY

Adam Bee



712

New York Scaffolding Co
Liebel-Bruns Con Co
D 231

231

No. 854,959. PATENTED MAY 28, 1907.

W. J. MURRAY.

ADJUSTABLE SCAFFOLD.

APPLICATION FILED NOV. 12, 1906.

3 SHEETS—SHEET 2.

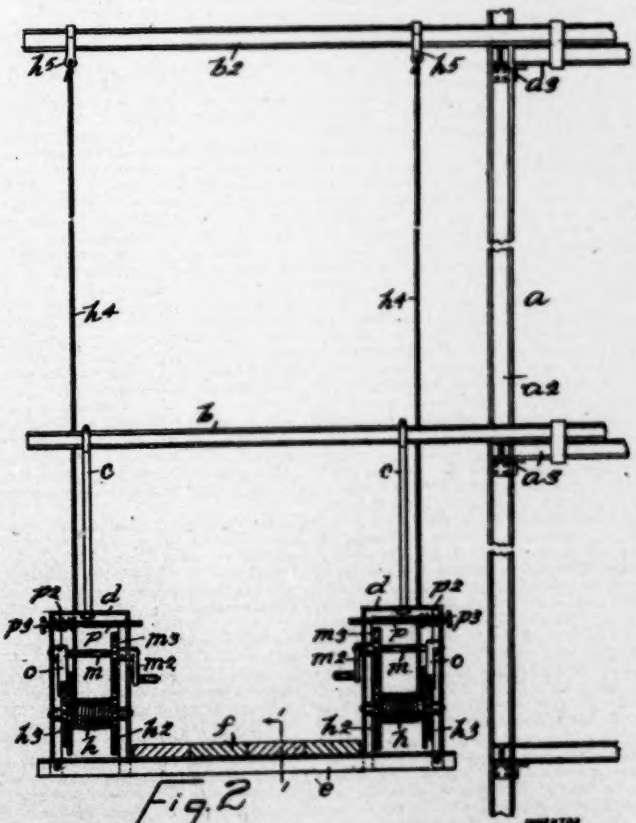


Fig. 2.

WITNESSES
[illegible]

INVENTOR
William J. Murray

BY
J. Edwin Lewis
ATTORNEY

Adam Bee

UNITED STATES PATENT OFFICE.

WILLIAM J. MURRAY, OF NEW YORK, N. Y

ADJUSTABLE SCAFFOLD.

No. 854,959. Specification of Letters Patent. Patented May 28, 1907.

Application filed November 13, 1906. Serial No. 343,573.

To all whom it may concern:

Be it known that I, WILLIAM J. MURRAY, a citizen of the United States of America, and residing at New York, in the county of New York and State of New York, have invented certain new and useful Improvements in Adjustable Scaffolds, of which the following is a specification, such as will enable those skilled in the art to which it appertains to make and use the same.

This invention relates to builder's scaffolds and the object thereof is to provide such a scaffold which will permit of adjustment at any height during the construction of a building or the repair thereof; a further object being to provide such a scaffold which may be readily moved from one position to another by the workmen thereon without interfering materially with the work being performed and a still further object being to provide a scaffold of this description in which different supports are employed and in which the shifting from one set of supports to another set may be accomplished without interfering, in any degree, with the workmen thereon or their work.

My invention is fully described in the following specification, of which the accompanying drawings form a part, in which the separate parts are designated by suitable reference characters in each of the views, and in which:—

Figure 1 is a longitudinal view of a scaffold constructed according to my invention and shown partly in a section taken on the line 1—1 of Fig. 2; and Fig. 2 is a view thereof taken on the line 2—2 of Fig. 1 and showing partially the building upon which it is mounted and the manner of mounting.

In the drawings forming a part of this application I have shown partially a building *a* of structural iron and in course of construction and which comprises the usual uprights a^1, and horizontal beams a^2 and in the practice of my invention I provide out-riggers *b* and b^1 which are secured to the structure *a* in any desired manner but which may be readily removed from one position to another as the work progresses and it will be understood that in buildings already finished the out-riggers *b* and b^1 may be projected through windows or secured to the roof in any manner to make them safe.

In the position of the scaffold shown the out-riggers *b* have each two rods suspended therefrom said rods *c* being each secured, preferably detachably, to a frame *d* composed preferably of angle-iron, said frames being arranged in pairs and each pair being secured to a horizontal beam *e*, said beams *e* serving as supports for the usual planking *f* composing the flooring of the scaffold.

Rotatably mounted in each of the frames *d* is a drum *h* provided with a gear-wheel h^1 and a ratchet-wheel h^2 and a rope or cable h^3 is wound upon the drums *h* and are each provided with a hook h^4 or equivalent device on the outer ends thereof. Rotatably mounted in each of the frames *d*, over the drums *h*, is a shaft *m* provided with a crank-arm m^1 and with a pinion m^2 engaging the gear-wheel h^1 and loosely mounted on the shaft *m* is a pawl *o* which engages the teeth of the ratchet-wheel h^2 as clearly shown. Passing through the frames *d*, over the shafts *m*, is a rod *p* which is normally forced in the direction of the crank-arm m^1 by means of a spring p^2 and the rods *p* are each provided with a handle p^3 by means of which they may be drawn backwardly and, if desired, devices to hold the rods *p* in their backward position may be provided, none however being shown as various simple devices for this purpose are known.

In the use of my invention, a set of out-riggers *b* is placed in position and the hooks h^4 of the cables h^3 are hung thereon and when the crank-arms m^1 are operated the cables are wound on the corresponding drums until the frames *d* are clear of the ground after which the planking *f* is placed in position and the scaffold is ready for use, and, as the work progresses, the scaffold is raised by degrees until the cables are almost entirely wound on the drums and the scaffold is in close proximity to the out-riggers *b*. Before this position has been reached by the scaffold, however, workmen other than those upon the scaffold have arranged the set b^1 of the out-riggers at a greater height after which the rods *c* are hooked to the out-riggers *b*, the cables unwound from the drums and the hooks thereof hung from the out-riggers b^1 and when the crank-arms are again operated the scaffold is supported from the out-riggers b^1 after which the out-riggers *b* are removed and secured at a still greater height than the out-riggers b^1 and ready for another shift. It will be seen that the work being done from the scaffold has not been interfered with in this shifting of supports and much saving of time results for the high priced mechanics for the reason that ordinary laborers can per-

form the said shifting and they may also raise the scaffold by degrees by means of the crank-arms m^3, and it will be understood that the spring operated rods p are used as an additional preventive means of unwinding of the cables if the pawl o should fail to engage the ratchet-wheel properly.

Having fully described my invention, what I claim as new, with the reservation of such modifications as come within the scope of the following claims, is:—

The combination with two bars having means for detachably securing them to a building, of a platform, frames on said platform carrying means operable from the platform and having connections adapted to be connected to one of said bars for raising the platform, and supporting means on said frames extending above the said bar when the platform has been fully raised and adapted to detachably engage said bar and rigidly support the platform therefrom, whereby the platform may be connected to one bar by the raising means and raised to a level to engage the supporting means with said bar and may then remain supported by said bar while the other bar is placed at a higher level and the raising means secured to the latter, the bars thus becoming alternately points of raising support and of rigid support for the platforms.

In testimony that I claim the foregoing as my invention I have signed my name in presence of the subscribing witnesses this 8th day of November, 1906.

WILLIAM J. MURRAY.

Witnesses:
J. C. Larsen,
H. Moulan.

In the United States Circuit Court of Appeals for the Third Circuit, March Term, 1917.

No. 2205.

NEW YORK SCAFFOLDING CO., Appellant,

vs.

LIEBEL-BINNEY CONSTRUCTION CO., Appellee.

And afterwards, to wit, on the eighth day of March, 1917, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Hon. Joseph Buffington, Hon. John B. McPherson, and Hon. Victor B. Woolley, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the third day of July, 1917, come the parties aforesaid by their counsel aforesaid, and the Court now being fully advised in the premises, renders the following decision:

In the United States Circuit Court of Appeals for the Third Circuit.

NEW YORK SCAFFOLDING COMPANY, Complainant-Appellant,

vs.

LIEBEL-BINNEY CONSTRUCTION COMPANY, Defendant-Appellee.

Appeal from the District Court of the United States for the Western District of Pennsylvania.

Before Buffington, McPherson, and Woolley, Circuit Judges.

WOOLLEY, *Circuit Judge:*

This is a suit for infringement of Letters Patent No. 959,008, issued to E. H. Henderson, May 24, 1910, and is here on the plaintiff's appeal from a decree of the District Court dismissing the bill on the ground of invalidity of the patent.

The patent is for scaffold supporting means. The claims in issue are 1 and 3. The alleged infringing scaffold used by the defendant was known as the Whitney scaffolding device, manufactured and leased by Egbert Whitney under a junior patent. (Letters Patent No. 998,270 to Whitney.)

In the erection of modern steel frame structures, contractors have found it more economical to rent scaffolds than to buy them. This suit is a part of a controversy between rival scaffold renting concerns.

In other litigation instituted by this plaintiff against another defendant, involving the validity of the same claims of the Henderson patent and infringement by the same device of the Whitney patent, the Circuit Court of Appeals for the Eighth Circuit, reversing the District Court for the District of Nebraska, held the claims valid and infringed. New York Scaffolding Co. vs. Whitney, 224 Fed. 452. In reaching an opposite conclusion in this case upon precisely the same issues and upon substantially the same facts, the learned District Judge hesitated, as do we, in disturbing the force of a decision of a court of coordinate jurisdiction and in preventing uniformity of decision by yielding to his own convictions. Yet we feel this is a case where comity, being a rule of convenience intended to persuade, not to command, (Mast, Foos & Co. vs. Stover Mfg. Co., 177 U. S. 485, 488), should not prevail against an opposite judgment when based upon clear conviction.

The matters which induced the District Court to its judgment, holding invalid a patent previously declared valid by another court, are fully set forth in its opinion, — Fed. —. These appeal to us with like convincing force. We shall consider them briefly.

In determining whether Henderson's device was a contribution to the art, involving invention, though narrow or was merely a departure from the art by formal changes in prior devices, we must inquire what Henderson did and what problem he solved.

Scaffolds are as old as buildings; and scaffolds of different types have conformed time out of mind to the types of buildings upon which they were used. When buildings were low, scaffolds likewise were low, and were constructed along lines of greatest convenience, namely from the ground up. When structures increased in height, scaffolds likewise increased in height to a point where the elements of cost and danger induced a change. Then instead of being built on the ground upward they were suspended from the roof downward. When this change was found expedient, the art went for information to other arts in which scaffolds, by reason of their peculiar uses, had never been built upon the ground but had always been suspended from above. Among these was the seaman's, in which was found the boatswain's chair, a simple contrivance made of a board with ropes through each end after the manner of a child's swing, which converge toward and are connected with a main rope hung from the mast-head or cross-tree, and passed through an overhead block and returned to the operator, by which he raised and lowered his position along the mast. Then there was the painter's stage or hanger, which is nothing more than a longer board, the ends of which are attached to ropes suspended from the ship's rail, capable of being raised and lowered from above or by blocks from below, and used by sailors when painting the ship's sides. The painter's stage was brought to land and conveniently used upon buildings. It consisted of a plank or planks used as a platform resting upon cross-bars, the ends of which were held by ropes passed through eyes, which in turn were suspended from large metal hooks so shaped as to securely grasp the roof of the building. This platform was readily adjusted by block and fall to any elevation.

This crude but much used device was improved by Bowyer and Casperson in their Patent No. 382,252 (1888) by arranging in one structure an enlarged cross-bar or putlog and a drum by which to operate the overhead block and fall and elevate and lower the platform, which extended from one putlog to the other.

Platforms of both the crude and improved types were sufficiently steady for sailors and painters who did their work while sitting, but they were not sufficiently firm and steady for the heavier and more active work of bricklayers. As the demand for overhanging scaffolds increased with the increasing height of modern buildings, Clark (Letters Patent No. 673,384—1901) disclosed a mason's platform for such buildings by hanging perforated metal ribbons or strips in pairs from projected out-riggers, attaching putlogs to each pair, and suspending platforms on the putlogs. The platform was adjusted by pinning the putlogs at different positions in the perforations. Foster secured a patent (No. 763,274—1904) for substituting steel cables for the metal ribbons and bolt clamps for the pin fastenings of Clark, which, though held invalid by this court for want of patentable invention. (— Fed. —) was a scaffold in the art prior to Henderson. Scaffolds made like Clark and Foster in multiple pairs were found to possess rigidity, but they were adjustable only by changing the putlog sustaining bolts and pins, with loss of time and risk of injury. Cavanaugh overcame these difficulties by a patented device (No. 796,807—1905) for elevating scaffolds of this type by drums positioned on the outriggers but operated by chains suspending loosely to the platform. Murray (No. 854,959—1907) improved upon Cavanaugh by changing the position of the drums from the projecting out-riggers to the platform. The hoisting mechanism of Murray consists of a drum with bearings mounted in upright arms of a rectangular metal frame connected and stiffened at the top and bottom by metal rods. The metal frame serves the double purpose of holding the drum in position and of affording a place for engagement with a putlog. To the lower part of the metal frame is rigidly attached one end of a putlog, the other end being similarly attached to the metal frame of another like hoisting mechanism. The drums in pairs are then connected with the pairs of steel cable of Foster. The platform extending from putlog to putlog may then be raised or lowered by winding or unwinding the drums in pairs. In this arrangement the drum frames are placed edgewise the building. This is to be noted because it is the principal thing, which, it is claimed, distinguishes Murray from the patent in suit.

This was the art when Henderson entered it. Henderson took the drum of Murray, positioned it in a drum frame in the same way and for the same purpose, but he made the frame U-shaped instead of rectangular, and changed the position of the frame and drum from edge to the building to flat with the building, thereby permitting a putlog to be loosely placed and held within the bend of the U. Much stress has been laid in this and other litigation on this difference in position of the drum and manner of engagement of the putlog. In this difference patentable invention is claimed, and has been found, (224 Fed. 452). This is the only difference we

discern between Murray and Henderson. We are not satisfied that by this difference Henderson made any improvement, patentable or otherwise. He provided a loose and unfastened putlog in place of the fixed and fastened putlog of Murray, and lessened the fixity and rigidity of the whole platform, thereby correspondingly lessening the security of the workmen which is just the opposite of what was pressed throughout the argument as the important consideration to induce masons to work with heavy materials upon swinging platforms. But however that may be, the evidence is that although Henderson followed Murray and claims to have improved upon his device, the Patent Scaffolding Company advertises only the Murray device, and seventy per cent of the scaffolds it puts out and rents are the Murray device.

We do not see what problem was presented to and solved by Henderson. He did what Murray had already done, but did it in a different way. Patentable invention does not reside in mere difference, either of construction or result. The difference in construction is small indeed, involving nothing more than mechanical skill. The difference in result is a small saving of space upon the platform. This saving does not appear to have been demanded before the patent or valued after it. Finding no new problem presented or solved and no real improvement made, we cannot conceive patentable invention in Henderson's formal changes from the prior art. We are therefore of opinion that Claims 1 and 3 of the patent are void for want of patentable invention.

The decree below is affirmed.

Endorsed: No. 2205. Opinion of the Court By Woolley, J. Received and filed July 3, 1917. Saunders Lewis, Jr., Clerk.

In the United States Circuit Court of Appeals for the Third Circuit, March Term, 1917.

No. 2205 (List No. 8).

NEW YORK SCAFFOLDING COMPANY, Appellant,

vs.

LIEBEL-BINNEY CONSTRUCTION CO., Appellee.

Appeal from the District Court of the United States for the Western District of Pennsylvania.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Western District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby affirmed, with costs.

(Signed) JOHN B. McPHERSON,
Circuit Judge.

Philadelphia, July 3, 1917.

Endorsed: No. 2205. Order Affirming Decree. Received and filed July 3, 1917. Saunders Lewis, Jr., Clerk.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, set:

I, Saunders Lewis, Jr., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby Certify the foregoing to be a true and faithful copy of the original transcript of record and proceedings in this Court in the case of New York Scaffolding Company, Appellant, vs. Liebel-Binney Construction Co., Appellee, No. 2205, on file, and now remaining among the records of the said Court, in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this twentieth day of July in the year of our Lord one thousand nine hundred and seventeen and of the Independence of the United States the one hundred and forty-second.

[Seal United States Circuit Court of Appeals, Third Circuit.]

SAUNDERS LEWIS, JR.,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

245 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit, Greeting:

Being informed that there is now pending before you a suit in which New York Scaffolding Company is appellant, and Liebel-Binney Construction Company is appellee, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Western District of Pennsylvania, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Su-
246 preme Court of the United States, Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-third day of November, in the year of our Lord one thousand nine hundred and seventeen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

247 [Endorsed:] 2205. File No. 26179. Supreme Court of the United States, October Term, 1917. No. 712. New York Scaffolding Company vs. Liebel-Binney Construction Company. Writ of Certiorari. Received Nov. 30, 1917. Saunders Lewis, Jr., Clerk.

248 In the United States Circuit Court of Appeals for the Third Circuit, March Term, 1917.

No. 2205.

NEW YORK SCAFFOLDING COMPANY, Plaintiff-Appellant,

vs.

LIEBEL-BINNEY CONSTRUCTION CO., Defendant-Appellee.

Return to Writ.

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true, and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of New York Scaffolding Company, Appellant,

vs. Liebel-Binney Construction Company, No. 2205, is a full, true, and complete transcript of the record and proceedings of this Court in said cause as mentioned in the certificate thereto.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Third Circuit, at office in the City of Philadelphia, Pennsylvania, this twenty-sixth day of December, 1917.

[Seal United States Circuit Court of Appeals, Third Circuit.]

SAUNDERS LEWIS, JR.,
Clerk United States Circuit Court of Appeals for the Third Circuit.

249 In the United States Circuit Court of Appeals for the Third Circuit.

NEW YORK SCAFFOLDING COMPANY, Plaintiff-Appellant,

vs.

LIEBEL-BINNEY CONSTRUCTION COMPANY, Defendant-Appellee.

Stipulation.

It is hereby stipulated between counsel for the respective parties that the certified transcript of record now on file in the United States Supreme Court can be taken as a return to the writ of certiorari granted on the 19th day of November in the above entitled case, and that a certified copy of this stipulation may be sent up by the clerk of this court to the clerk of the United States Supreme Court as a return to the writ addressed to this Hon. Court.

This stipulation is without prejudice to the right of either party to correct and supply any deficiencies that may appear in said record, if any should appear.

(Signed) C. P. GOEPEL,
Counsel for Appellant.
ROBT. H. PARKINSON,
WALLACE R. LANE,
Counsel for Appellee.

Dec. 22, 1917.

Endorsed: No. 2205. Stipulation of counsel Received and filed Dec. 26, 1917. Saunders Lewis, Jr., Clerk.

250 [Endorsed:] File No. 26179. Supreme Court U. S., October term, 1917. Term No. 712. New York Scaffolding Company, Petitioner, vs. Liebel-Binney Construction Company. Writ of certiorari and return. Filed December 27, 1917.

NEW YORK SCAFFOLDING COMPANY *v.* LIEBEL-BINNEY CONSTRUCTION COMPANY.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

No. 22. Argued October 7, 8, 1920.—Decided November 8, 1920.

The court notices the earlier forms of scaffolding used in the construction of buildings. P. 26.

The fact that certain advantages over the prior art asserted for the patented device here in question were not asserted in the patent itself, *held* not to deprive the patent of their benefit in determining whether the device was an invention. P. 31.

Patent No. 959,008, claims 1 and 3, to Elias H. Henderson, for improvements in scaffold-supporting means, does not involve any invention over the prior art as displayed in the earlier patent to William J. Murray, but merely mechanical changes, easy to discern and to make, and incidental to the main idea of the Murray patent. Pp. 27–31.

243 Fed. Rep. 577, affirmed.

THE case is stated in the opinion.

Mr. Frederick P. Fish, with whom *Mr. C. P. Goepel, Mr. R. W. Hardie* and *Mr. F. C. Somes* were on the briefs, for petitioner.

Mr. Wallace R. Lane and *Mr. Robert H. Parkinson* for respondent.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Suit for infringement by the Construction Company of a patent dated May 24, 1910, and numbered 959,008, for new and useful improvements in "Scaffold-Supporting

Means," granted to Elias H. Henderson. Petitioner is assignee of the patent.

An injunction was prayed, accounting of profits and damages.

The patent is in the usual form, but a special manner of use of the invention is alleged. It is alleged that, since the acquisition of the patent, petitioner has been largely engaged in different cities of the United States in putting the invention into practice, and the manner thereof has been to construct and lease for use to builders and others at a specified royalty or price per week, the scaffolds embodying the invention, petitioner retaining the ownership of and title to the scaffolds, they being returned to petitioner upon the completion by the lessees of the work for which the scaffolds had been required.

The answer of the Construction Company directly put in issue certain of the allegations of the petition. It admitted, however, the use of scaffolds which it purchased from the Eclipse Scaffolding Company of Omaha, Nebraska, but alleged that such scaffolds did not contain or embody the invention protected by patent No. 959,008, in any way or manner.

It is also alleged that petitioner, sometime prior to February 21, 1914, brought suit in equity in the United States District Court for the District of Nebraska, against one Egbert Whitney, predecessor in the title of the Eclipse Scaffolding Company to the scaffolds sold by the latter company to the Construction Company, in which suit infringement of patent No. 959,008 was alleged.

In that suit a patent of one William J. Murray was pleaded, but the Scaffolding Company withdrew its case as to that patent and relied on claims 1 and 3 of the patent to Henderson, and the court decreed that the claims were void for want of invention, and it is alleged that the Construction Company "is entitled to the protection of said decree."

On the issues thus made by bill and answer proofs were taken and the court decreed against the patent, saying, in its opinion, that "the Henderson patent has not supplanted others, nor has the influence of its owner been exerted to that end. It barely represents a step in the art. It does not disclose invention." And further, "In view of the conclusion reached by this court that claims 1 and 3 of the patent in said suit are invalid, it is unnecessary to do more than touch upon the matter of infringement. The evidence of infringement is meagre, and yet, if the claims of patent in suit were to be held valid with a range of equivalents, infringement would be found." The decree was affirmed by the Circuit Court of Appeals. 243 Fed. Rep. 577.

The Construction Company pleaded in defense, as we have said, the decree of the District Court of Nebraska in the suit of petitioner against Egbert Whitney, but that decree was reversed by the Circuit Court of Appeals, 224 Fed. Rep. 452. The reversal and the opinion of the Circuit Court of Appeals thereon are much relied on in this suit, and we may say constituted the inducement to issue certiorari. It is seemingly antithetical to the opinion and judgment under review, and the Circuit Court of Appeals for the Third Circuit felt and expressed the embarrassment of "disturbing the force of a decision of a court of coördinate jurisdiction," formed "upon precisely the same issues and upon substantially the same facts." The court, however, felt constrained to an "opposite judgment" and decided that Henderson made but "formal changes" in the prior art which involved no invention, and affirmed the decree of the District Court.

Necessarily, for an estimate of Henderson's patent we must consider the prior art. It is detailed by witnesses, explained by counsel, and illustrated. Specific descriptions are not necessary. We may refer to our own observation of the first forms of scaffolding. To quote

District Judge Orr, "Originally, scaffolding was made to rest upon the ground and was increased in height as the building of the structure demanded." The first forms of scaffolding which constituted the prior art are described by a witness as "the thrust out scaffold, the pull scaffold, the timber scaffold; that they were built right up to the front of the building." In 1900, he testified, "a new device came on the market, or a new structure, and, in place of building up from the ground, they hung a rigid iron frame from the upper stories of the building. That could be used on three or four stories sometimes. It was heavy, inconvenient to handle, and did not meet with very great success, although it did seem to be an improvement over the old poles. Then there came another form of scaffolding, which was a suspended wire platform scaffold, suspending the wires from the top of the building. . . . Then there came the Cavanagh overhead scaffolding machine. . . . That machine became fairly well used, after being introduced, and was apparently a great improvement over any other. Then Murray came in the market with his platform machine; a machine operated from the platform, the fastening of the wire that supported the platform being from above, the wire being secured to the out-riggers from the upper part of the building. Then the Henderson machine, supported by cables from the upper part of the building, and similar in a great many respects, except that the machines were placed in the opposite position, enabling you to make a scaffold of any width, which would seem to be the latest."

The Murray patent, therefore, is the step in the prior art preceding that made by Henderson and a comparison of the latter's patent with it, the Murray patent, is immediately indicated.

Murray describes his invention to be of "new and useful Improvements in Adjustable Scaffolds." The object of it, he said, was to provide such a scaffold as would

"permit of adjustment at any height during the construction of a building or the repair thereof." And he claimed, "The combination with two bars having means for detachably securing them to a building, of a platform, frames on said platform carrying means operable from the platform and having connections adapted to be connected to one of said bars for raising the platform, and supporting means on said frames extending above the said bar when the platform has been fully raised and adapted to detachably engage said bar and rigidly support the platform therefrom, whereby, the platform may be connected to one bar by the raising means and raised to a level to engage the supporting means with said bar and may then remain supported by said bar while the other bar is placed at a higher level and the raising means secured to the latter, the bars thus becoming alternately points of raising support and of rigid support for the platforms."

On page 29 is the illustrative diagram of the claim.

Henderson describes his invention as "certain new and Improved Scaffold-Supporting Means," and further says it relates "to an improved means for supporting scaffolds used in connection with the construction of buildings and their repair." In other words, the patent is, as the Murray patent is, for improvement of scaffold supporting means. And the details given by Murray, or necessarily implied by him, and the inevitable adjuncts "of cross beam and floor piece" are made elements in the combinations claimed in three claims. There is a change from the Murray hoisting device and it is described to consist "of a continuous U-shaped metal bar extending around the under side of and upward from the associated beam, . . ." The continuity of metal is the novel element asserted. Counsel emphasize it, not so much for itself as for what it permits. It permits according to counsel, a "hinged or loose jointed connection between the putlog [called in the claims "cross beam"], and the

frames that support the putlog and the hoisting mechanism," and counsel say that this is a "separate and distinct entity from the elements of the Murray patent, differing in structure, function and result produced." And of this it is insisted there was no suggestion in the Murray patent, it containing but a single claim and a

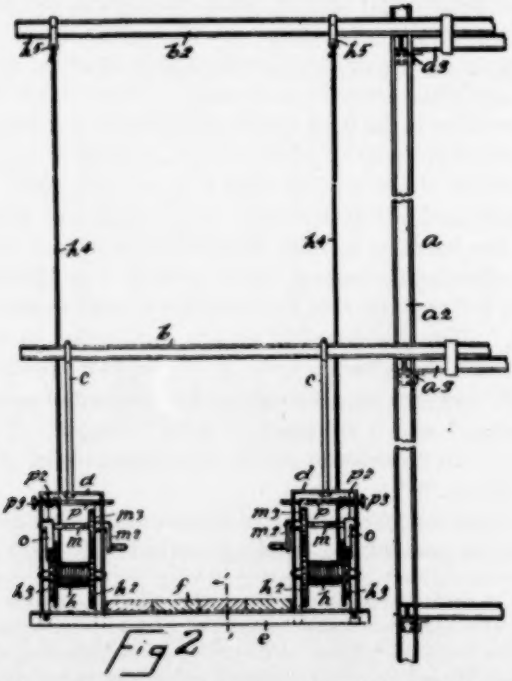


Fig 2

single idea, "the idea of supporting the scaffold to outriggers by means of auxiliary bars or rods," so that the platform or scaffold by the lengthening of the cables can be raised to a greater height than before. In other words, the assertion is that Murray invented nothing and saw nothing in his device but means of raising the scaffold, and, to use counsel's word, all other "functions" were

beyond his vision. Or again, and to bring out clearly counsel's contention, "Henderson did not do what Murray did. Murray provided means for supporting a platform temporarily on one set of outriggers while the cables were being adjusted to a higher set of outriggers. That is all Murray did, and that was embodied in the one claim of the patent and that is what Henderson did not do. Murray, on the other hand, never suggested the idea of making a hinged or flexible connection between the putlogs and their supporting frames." The utility of this construction is the final assertion, and that the continuity of metal of the stirrup adds strength, and the loose jointed connection of the putlogs with it gives "flexibility longitudinally and also transversely of the platform" and "enables the operator to raise the scaffold machines one at a time, allowing the putlogs to tip or hinge over the support of the U-frame, leaving the machine to stand erect at all times." The advantage of this is emphasized in various ways and the construction, it is insisted, quoting the patent, "secures the greatest possible amount of security."

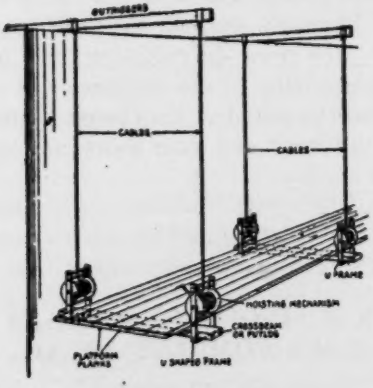
Claims 1 and 3 are inserted in the margin.[1] The following is an illustration of them taken from brief of counsel. [See p. 31].

It is further contended that the arrangment of the hoisting device parallel to a building, instead of at right angles

[1] "1. A scaffold consisting in the combination of cross beams, floor pieces extending between such beams, and a hoisting device associated with each end of each beam, each hoisting device consisting of a continuous U-shaped metal bar extending around the under side of and upward from the associated beam, and a hoisting drum rotatably supported by the side members of such bar."

"3. A scaffold consisting of a plurality of U-shaped bars arranged in pairs, a cross beam laid in and extending between each pair of such U-shaped bars, a floor laid upon said cross beam, a drum rotatably supported between the upwardly extending side members of each of said U-shaped bars, and means for controlling the rotation of said drum."

to it as in the Murray patent, gives more room to the working masons and mechanics, and contributes therefore to their security. This advantage was asserted in the patent, the others were not, nor displayed or counted on. They, however, may be conceded. The fact of non-display in the patent, while it does not militate against his claims for the advantages, causes surprise at least, considering the emphasis that is now put upon them and the assertion that they distinguish and make superior his mechan-



isms to all that preceded them. However, we may concede to counsel, for the sake of the argument, all of the uses and excellences of the patent, even though not discerned by Henderson, but his pretensions, whether at first hand or second, his or those of his counsel, must be subjected to the test and estimate of the prior art and so subjecting them we can discern no exercise of invention. The changes were simply mechanical, easy to discern, and as easy to make, incidental entirely to the main idea of Murray which was, as was declared by him, to provide a scaffold that would "permit of adjustment at any height during the construction of a building or the repair thereof" —a scaffold which might "be readily moved from one

position to another by the workmen thereon without interfering materially with the work being performed," and one "in which different supports are employed," and "in which the shifting from one set of supports to another set," might "be accomplished without interfering, in any degree, with the workmen thereon or their work." A glance at the diagram which we have given will show that he accomplished his purpose and the way he accomplished it; a glance at the diagram we have given of the Henderson device will show that it is a substantial imitation of Murray's scaffold, the variations being only mechanical. The chief difficulty we have found in the case is the plausibility of the arguments of counsel, and that it secured the assent of the Circuit Court of Appeals for the Eighth Circuit and other courts and strength from such assent.

Decree affirmed.